S. HRG. 102-148

NUCLEAR WASTE MANAGEMENT PROVISIONS OF THE NATIONAL ENERGY STRATEGY ACT

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON THE

NUCLEAR WASTE MANAGEMENT PROVISIONS OF THE ADMINISTRATION'S NATIONAL ENERGY STRATEGY ACT AS CONTAINED IN SUBTITLE B OF TITLE V OF S. 570

MAY 13, 1991

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
44-078 WASHINGTON : 1991

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-035424-2

44-078 - 91 - 1

S311-65

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CONTENTS

	Page
S. 570 (subtitle B of title V)	3

STATEMENTS

Bilbray, Hon. James H., U.S. Representative from Nevada	13
Bradhurst, Stephen, repository program manager, Nye County, NV	47
Bryan, Hon. Richard H., U.S. Senator from Nevada	8
Craig, Hon. Larry E., U.S. Senator from Idaho	7
Dondero, Thalia, commissioner, Board of Commissioners, Clark County, NV	43
Draper, Dr. E. Linn, chairman, president, and chief executive officer, Gulf States Utilities Companies	63
Habicht, F. Henry II, Deputy Administrator, Environmental Protection Agency	27
Johnston, Hon. J. Bennett, U.S. Senator from Louisiana	1
Loux, Robert R., executive director, Nevada Agency for Nuclear Projects, Carson City, NV	40
Moore, W. Henson, Deputy Secretary, Department of Energy	18
Reid, Hon. Harry, U.S. Senator from Nevada	10
Wallop, Hon. Malcolm, U.S. Senator from Wyoming	7

APPENDIX

Responses to additional questions	79

NUCLEAR WASTE MANAGEMENT PROVISIONS OF THE NATIONAL ENERGY STRATEGY ACT

MONDAY, MAY 13, 1991

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The committee will come to order. Today the committee will hear testimony on the nuclear waste provisions of the administration's national energy strategy. These provisions are contained in S. 570, the National Energy Strategy Act of 1991, which was submitted to the Congress by the Department of Energy.

The issue of nuclear waste is certainly not a new one for this committee. We have held many hearings on nuclear waste and we have passed many bills dealing with nuclear waste. The success of the Department of Energy's nuclear waste program is extremely important to this committee. The success of this program is extremely important to the Nation.

Storage and disposal of nuclear waste is not a technical problem. It is a political and an emotional problem. It is a problem that boils down to two very simple facts. Nuclear waste must be disposed of somewhere, but no one wants it in his State.

This is the committee's second hearing on nuclear waste this year. In March, we heard from all of the key players in the nuclear waste debate. Several facts were established at that hearing.

First, the Department of Energy is ready to initiate new site characterization work at Yucca Mountain. Second, the Department of Energy needs to be able to conduct this site testing in order to assess the suitability of the site; and third, there is no technical reason to disqualify the Yucca Mountain site at this time.

At the March hearing, the Secretary of Energy, Admiral Watkins, made a very persuasive case for the need for legislation to allow the site characterization process to move forward. Today, we will receive testimony on the specific provisions of the administration's legislation.

Frankly, I had hoped that legislation would not be necessary to gain access to the Yucca Mountain site. I had hoped that some agreement could be reached with the State of Nevada that would

allow the Department of Energy's program to go forward. If there is still some hope for that, I hope the witnesses today will tell us about it.

[The text of subtitle B of title V of S. 570 follows:]

II

102D CONGRESS
1ST SESSION

S. 570

To implement the National Energy Strategy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6 (legislative day, FEBRUARY 6), 1991

Mr. JOHNSTON (for himself and Mr. WALLOP) (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To implement the National Energy Strategy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Energy Strategy Act".

* * * * * * *

TITLE V—NUCLEAR POWER

* * * * * * *

Subtitle B—Nuclear Waste Management Repository Site Characterization

SEC. 511. Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C.10133(a)) is amended to read as follows:

"(a) IN GENERAL.—(1) The Secretary shall carry out, in accordance with this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 112(b)(2) of this Act and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in those comments or in the environmental assessment submitted under subsection (b)(1) of this section.

"(2) Notwithstanding any other law, for the purpose of site characterization activities, a Federal agency administering a law, ordinance, or regulation that imposes a requirement for a permit, license, right of way, certification, approval, or other authorization, shall administer the application of that law, ordinance, or regulation to site characterization activities conducted by the Secretary under this Act without regard to whether its administration has

been or could be, delegated to a State or superseded by a comparable State law.

"(3)(A) A requirement for a permit, license, right of way, certification, approval, other authorization imposed by a State, local, or tribal law, ordinance, or regulation does not apply to site characterization activities under this Act.

"(B) The Secretary shall carry out site characterization activities under this Act notwithstanding a denial of, or refusal to act on, an application for a permit, license, right of way, certification, approval, or other authorization required by a State, local, or tribal, ordinance, or regulation.

"(4) Notwithstanding paragraph (3), in carrying out site characterization activities under this Act, the Secretary shall consider the views of State, local, and tribal officials regarding the substantive provisions of State and local laws, ordinances, and regulations.

"(5) An action to contest the constitutionality of a provision of this subsection must be brought within 60 days of the date of the enactment of the National Energy Strategy Act. A court may not enjoin site characterization activities carried out by the Secretary under this Act in an action brought to contest the constitutionality of a provision of this subsection except as part of a final judgment.

"(6) Paragraphs (2), (3), (4), and (5) of this subsection apply only to site characterization activities conducted or begun before the Secretary submits to the Commission under section 114(b) of this Act (42 U.S.C. 10134(b)) an application for a construction authorization for a repository.

"(7) The exclusion or inclusion of any provisions contained in paragraphs (2), (3), (4), or (5) of this subsection in a negotiated proposed agreement development under title IV of this Act shall not affect any determinations regarding either the reasonableness or appropriateness of such an agreement.".

MONITORED RETRIEVABLE STORAGE FACILITY

Sec. 512. Sections 145(b) and 148(d)(1) and (2) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 1065(b) and 1068(d)(1) and (2)) are repealed.

* * * * * * *

The CHAIRMAN. We will first hear from the distinguished Ranking Minority Member, and then I look forward to hearing from our good friends Senator Bryan and Congressman Bilbray from Nevada. So, first, Senator Wallop.

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Thank you, Mr. Chairman. Good morning.

Today once again we visit one of America's thorniest problems—nuclear waste. What is perplexing to me is that after 9 years of proceeding along a path toward characterizing a site to determine its suitability for a deep geologic repository, we have accomplished practically nothing toward that end.

The program remains mired, not in technical difficulty, but in a legal and procedural nightmare borne of one State's avowed intention to thwart the entire process. In the meantime, spent fuel continues to collect at 111 different reactor sites.

This frustrating situation must come to an end. We will today examine the options available to break the impasse so that the site characterization can proceed.

I, like the Chairman, am loath to impose the Federal will on a State strongly opposed to a Federal program, but we must take a hard look at balancing America's interest with the State's rights in this instance. The Department of Energy must be given a reasonable opportunity to characterize the Yucca Mountain site. To that end, I—like you, Mr. Chairman—look forward to hearing from today's witnesses.

The CHAIRMAN. Senator Craig.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman, let me echo your concerns and the concerns of the ranking member of this committee as it relates to the handling of this high-level nuclear waste. As somebody who has constantly spoken out in behalf of State's rights, through the early 1980's, I was one of those who argued that the legislation and the law at hand was one that we ought to allow to try to work its will, and it did not. And then, in an effort to try to balance out geographically, I argued—as many did—that there ought to be duality to siting, both in the East and in the West, to restrict at least some of the transportation concerns and that we would all share relatively equal, in which I think Senator Wallop has called, America's problem.

That did not happen either, and finally, in the amendments of 1987, I supported a single site, that we ought to move on if we were to, as a Nation, truly address our energy needs and that in those needs was a blend, and in that blend was nuclear.

We are now at a point where the State of Nevada, in all its efforts is trying to, if not stop, certainly hinder what I think I have to agree is now an absolute necessity. And although I would certainly argue the right of the State of Nevada to make sure in every instance that that which the Federal Government does is safe and

sound in all the science that is available, to absolutely attempt to stop it is not something that is, at this point any longer, acceptable.

I hope, though, in the process we will all become increasingly wiser and, I think, as time progresses maybe we are, and that prior to deep geological depositing of spent fuel rods, we will get to a monitored retrieval storage and a reprocessing. America is beginning to awaken to the fact that nuclear energy is by far the most environmentally sound, safe and abundant source of energy into the future. And we will need to reprocess those fuel rods.

Today, this legislation separates something that we bound together in kind of an impossible trail of events. It separates the MRS from the high-level waste repository and allows a separate track, which I think, is critically important if we are to handle this particular type of waste in a responsible fashion.

So I look forward to the testimony from all of the parties involved but, at the same time, recognize now after trying over nearly a decade to be cooperative in assuring State rights, that we are at a very important point in this country's energy needs in which we move forward as aggressively and soundly and safely as possible. I would hope legislation was not needed, but S. 570 does address that issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Craig. Gentlemen, Senator Bryan, you first, if you would please proceed. Nice to have you before the committee again.

STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA

Senator BRYAN. Mr. Chairman, let me preface my comments by thanking you once again, as Chairman, for your courtesy in hearing us again today. With your permission and the committee's, Senator Reid is attending a hearing this morning on highway issues and is unable to join us. He has a statement for the record, may I offer it on his behalf?

The CHAIRMAN. We will put that in the record.

Senator BRYAN. I have a similar statement and in the interest of time, Mr. Chairman, would ask that it be made a part of the record, as well.

The CHAIRMAN. Yes.

Senator Bryan. I will make a few brief comments, if I may.

Mr. Chairman, from our perspective, this is a naked power grab by the Federal Government. It would put any notion of State's rights through the shredder. In my view, it is unnecessary, and I would like to speak to the present posture of the application process and at least share our perspective that, hopefully, the committee will consider.

The notion that somehow but for Nevada's opposition this project would be proceeding smoothly ahead is a big lie. The General Accounting Office has indicated in its recent report that notwithstanding the objections that Nevadans have had to it, that the Department of Energy would not have been prepared to go forward on site characterization until the spring of this year, 1991. I think

sometimes in all of the exchange that we have had that that fact does not always come to the surface.

Moreover, I think we need to examine just for a moment what is being sought here. This is a preemption of State law. One cannot adhere or claim advocacy and support of State's rights and consistently support the provisions contained in section 511. And let me speak with some specificity, if I may.

The waiver provisions that are sought in section 511 would in effect supersede and preempt State water law. For those of us in the West, the primacy of State water law has been something that we hold dear and have fought to defend. It is the doctrine of prior appropriation, first in time, first in right. If this measure is approved in the form in which it is submitted, the Federal Government will have the ability to preempt the State engineer in his determination as to whether there is water and whether or not a subsequent appropriation will impair or constitute a taking of the vested rights of an individual who holds a water permit prior, in point of time, senior and vested in every respect. That, Mr. Chairman, may I submit to this committee is unprecedented. And for those who have expressed concerns about the Federal Government's involvement in State water law, may I indicate that this particular provision would destroy its fundamental premise.

What has the State agreed to do? The State has agreed to treat the Federal Government in its application process no differently than any other citizen. The Governor has indicated that the process by which these applications are to be sought will be considered as any other application by any other applicant. Now, that is what the Federal Government said they originally want. Now that that has been agreed to, they have indicated that they do not want to be treated as any other applicant. They want to be given preferential treatment.

That is unfair; it is unacceptable, and that is something that I do not believe one can defend in terms of public policy.

Now, we are asked to give this special deference to an agency, the Department of Energy, whose track record of ineptitude is unparalleled in the history of the Federal establishment. I believe it is difficult to point to any program that they have managed with skill and efficiency, whether you are talking about the Savannah River project, which now has major cost overruns as the Inspector General has reported and has necessitated a reorganization of the management structure, or if you look at the General Accounting Office's review of the Department of Energy's conduct of the Yucca Mountain project, where $480 million, or 40 percent, of the total outlay has been devoted to management and in which case after case is pointed out in which the agency has wasted money by failing to adhere to fundamental guidelines.

Mr. Chairman, I would further say that the notion of the Department of Energy as being concerned about environmental issues, which all State's legitimately have, is another cause of major alarm for us. If one looks at the environmental cost at the Defense Production Facilities, having been run by the Department of Energy over the years, Senator Glenn's committee has indicated that the cleanup bill for that may be as much as $200 billion. And if one looks at the structure that is contemplated here with the De-

partment of Energy and the Environmental Protection Agency having preempted the State, we will again have a lack of environmental accountability about regarding concerns which the State of Nevada has raised.

Let me point and call your attention to the Fernald, Ohio, controversy in which the EPA has fined the Department of Energy nearly a half a million dollars, and they have taken the position that they are not going to pay it, and that issue, then, would presumably be resolved at the higher level. And, frankly, that does not give a lot of us great confidence that there is going to be much concern.

And, finally, I would simply point that this is a program that is in disarray. As indicated by the General Accounting Office recent review, at the present level at which it is funded there is already a $2 billion to $3 billion short fall, so I would respectfully submit to this committee that there are some serious management problems independent of the concerns which Nevada has raised, and I see no reason for this legislation to be required when the State has done now what the Federal agency originally requested, and that is to be treated as any other applicant for these permits to be processed. I do not see what justification one can argue for; in effect, the total preemption—which, in our view—would seriously impair State water law and do great damage to a constitutional federalism in which States and Federal Government ought to be able to work, reserving and respecting the powers that the States inherently have. I thank you, Mr. Chairman.

[The prepared statements of Senators Reid and Bryan follow:]

PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Mr. Chairman. I am pleased to have the opportunity to give you my views today concerning that portion of the Bush Administration "National Energy Strategy" that requests Congress to preempt Nevada State law when it comes to proposed activities at Yucca Mountain. I believe that these hearings will convince the Committee that this would set a terrible and unnecessary precedent that we would all come to regret.

The Secretary of Energy argues that this preemption of Nevada's rights is necessary to proceed with work at Yucca Mountain. It is not! Nevada Governor Bob Miller testified during a recent hearing in the Senate Energy and Natural Resources Committee that our state was ready, willing, and able to process federal requests for necessary environmental permits required to begin on-site investigations at Yucca Mountain.

The General Accounting Office issued a recent report that substantiates the fact that Nevada has not unduly held up the Energy Department's work at Yucca Mountain. The GAO has found that the Energy Department was not ready to begin work at Yucca Mountain until early this year. Nevada's actions in court were an appropriate response to the Energy Department's demands. They were not obstructive.

As I stated, Nevada is now ready to consider the Energy Department's requests for permits at Yucca Mountain. If the proposed federal actions are consistent with state environment requirements, the permits will be issued. If they are not, then the permits should not be issued.

Not only does the Energy Department's legislative proposal show an arrogant disregard for State sovereignty, but it also endangers the public health and safety of the citizens of Nevada. If Nevada is stripped of its right to protect the health and safety of its citizens, there is no one else to do it. When amendments to the Nuclear Waste Policy Act were enacted in 1987, public health and safety issues were relegated to a position of minor importance. I offered an amendment that would have ensured that public health and safety would be the number one consideration in the siting of a permanent nuclear waste dump. It was defeated. If the federal government really cares about the public's safety, why would such an amendment be re-

jected? I will continue to support Nevada's claim that it is their foremost responsibility to take every precaution to ensure that our citizens are protected.

Beyond the need to protect Nevada's citizens, there are broader issues that should be discussed. At the rate we are going, I believe that before the nuclear waste problem is solved, a great deal of taxpayers' money is going to be wasted. That is because I remain convinced that there is less than a 50-50 chance that Yucca Mountain will be found suitable for a permanent dump site. Significant questions about the site's suitability have already been raised by respected scientists both inside and outside government. More are bound to come. If we go all the way through the site characterization process before Yucca Mountain is disqualified, up to three billion dollars may be spent uselessly.

Clearly, the wisest course to have followed would have been to continue to investigate a number of sites, so that we wouldn't be ultimately faced with having invested billions of taxpayers' dollars in one site only to have to start over again someplace else because the initial site is found to be unacceptable. That was the strength of 1982 Nuclear Waste Act. It utilized this multisite approach.

In 1987, it was argued that a multisite approach was too expensive. Well, I, for one, will not be surprised if it turns out that a multisite approach would have been less expensive than the road we are now travelling.

I continue to believe that what lay behind the 1987 approach was an attempt to force location of the nuclear waste dump on the people of Nevada, whether or not Yucca Mountain is the best place to locate the dump, or, for that matter, whether or not a single permanent dump site is the best solution to our high level nuclear waste problems. I have no doubt that there are some who believe that if enough money is spent on Yucca Mountain, the dump will be put there, regardless of whether or not the site is suitable.

If we were spending the taxpayers' dollars wisely, we would be looking into more than one site for a permanent nuclear waste dump. We wouldn't even be limiting our investigations to permanent underground dumps. We would looking into other options such as Monitored Retrievable Storage and on-site storage using the dry cask technology. That way, the American people would ultimately be given a number of alternative methods for dealing with nuclear waste. That is the only appropriate approach to solving a problem as important and difficult as disposing of large quantities of high level nuclear waste.

Hearings such as this one today hold out hope that there is still a chance to correct the misguided nuclear waste policy we are now following. I intend to continue to raise questions about this policy until we get back on a sound path to dealing with the problems of disposing of our nuclear waste.

PREPARED STATEMENT OF HON. RICHARD H. BRYAN, U.S. SENATOR FROM NEVADA

Mr. Chairman, I thank you for the opportunity to appear before your distinguished committee this morning. I believe this hearing represents an opportunity to reevaluate a costly national public policy experiment that has gone badly awry—the Department of Energy's Civilian High Level Radioactive Waste Program.

The Nation is at a crossroads concerning high level radioactive waste management: we can proceed down the path suggested by the Department of Energy in the National Energy Strategy (NES) and further complicate the public policy blunders that have plagued this program by preempting Nevada's right to participate in the process, or we can take a fresh approach and act responsibly to save the Nation's utility ratepayers billions of dollars and preserve the fundamental balance of powers between the federal government and the states that our Constitution contemplates.

I also appreciate this opportunity to correct what I believe is a widespread misperception promoted by the Department of Energy and the nuclear industry that most of this program's troubles can be traced to the State of Nevada's opposition to the project. Recent General Accounting Office analysis clearly establishes what Nevada has been revealing for years—that the management defects of the program are so intractable, and DOE's approach to high level waste management so defective, that this program is guaranteed to fail under the best of circumstances. Indeed, the Department of Energy has used Nevada's opposition to this project to veil its own managerial incompetence.

And finally, I'd like to briefly address the fact that there is no impending high level nuclear waste disposal crisis, and that part of the existing program's troubles can be traced to the creation of a perception of crisis at the time the program was initiated. There are other responsible approaches available that may save the na-

tion's utility ratepayer's billions of dollars while assuring the health and safety of the public, and the viability of the nuclear power industry.

Even if the citizens of my state did not oppose this program—and as you know they do oppose this program stridently from the heart—I believe that the program's defective planning and fiscal management, combined with DOE's lack of credibility, would assure its failure. Although DOE has been unrelenting in its criticism of Nevada's opposition to the program, and has blamed the State's opposition for the lack of progress in site characterization, recent GAO testimony discredits that claim.

On April 18, 1991 the GAO testified before the Senate Subcommittee on Nuclear Regulation that: "Nevada's refusal to provide permits did not affect new on site construction work until February, 1991 because, as discussed above *DOE was not ready to begin this work until then. According to project officials, the state permit issue must be resolved by March 1992 or it will delay investigating the site.*" (emphasis added).

Thus, the waste and delay the program has suffered until now—$3 billion dollars—can be attributed solely to DOE's own defective planning and short-sighted goals. I believe the total coasts of the program can only grow, and it will soon be apparent that the 1 mil per kilowatt hour fee that ratepayers currently pay can only grow.

President Reagan signed the Nuclear Waste Policy Act on January 7, 1983, less than a week after I became Nevada's Governor. That act—which I supported—provided for a balanced and scientifically sound approach to waste disposal. Unfortunately, DOE politicized the program from the start, and the promise of the original act was destroyed by DOE's mismanagement.

The 1987 amendments to the act—which targeted only Nevada for further consideration for the waste dump—sealed Nevada's resolve to protest its selection.

Many things have changed in the time since the original act was signed into law. The Nation has a new President and a new Secretary of Energy. Nevada has a new Governor. Ratepayers have contributed nearly six billion dollars to the nuclear waste fund, and they owe an additional 1.6 billion dollars to the fund. I might note, Mr. Chairman, that the citizens of Indiana have contributed about $200,000,000 thus far to the program; ratepayers nationwide contribute in excess of $500 million per year, and nearly three billion dollars have been spent on the program, 1.2 billion at Yucca Mountain alone.

But one thing has not changed in those intervening years—despite having spent three billion dollars, the Nation is no closer today to having a nuclear waste dump than it was in the January frost of 1983 when I first took the Oath of Office as Governor of Nevada.

The DOE and nuclear industry policy makers underestimated the resolve of Nevada's citizens to rise up against the inequity represented by the 1987 amendments. Even more fundamentally, the DOE and the special interests were blind to the merits of the State's technical arguments that Yucca Mountain was a bad choice for further study, and that the policy being pursued risked a high degree of uncertainty and insufficiency.

The execution of the Nuclear Waste Policy Act by the Department of Energy since 1983 has been a monumental public policy blunder. And now the administration, at the urging of Secretary Watkins, is preparing to compound that failure by again singling out Nevada, proposing an unprecedented extinction of Nevada's sovereign ability to protect the health and safety of its citizens, and continue a policy of nuclear waste management that has only a single likely outcome—failure.

The repository program has been paralyzed by management and scientific deficiencies since the 1987 amendments were adopted. As a result, the target date for repository operations has slipped further with each passing year—first from 1998 to 2003, and now according to DOE's newest revised plan, no repository can open earlier than the year 2010.

As a result, utilities are having to face the reality of solving, at least on an interim basis, their own spent fuel storage needs. On March 20, 1991, with Senator Reid, I introduced S. 699 to help alleviate the burden on ratepayers that this situation represents. The Nuclear Regulatory Commission has issued a revision of its "waste confidence rule" which indicates that at-reactor spent fuel storage can be safely and effectively implemented for a period up to 100 years. Thus the crisis that prompted the 1982 act and its unrealistic deadlines—which DOE was unable to meet—has now vanished with necessary technological approaches gaining acceptance.

Unfortunately, existing law does not protect utility ratepayers from having to finance both the faltering federal effort and the interim storage that will be necessary because the Department of Energy will not be able to accept spent fuel for storage in 1998 as was promised in the original act. The legislation we introduced will

provide needed relief to the nuclear utility ratepayers by correcting this inequity so that ratepayers only pay once for necessary waste management efforts.

This legislation allows a nuclear utility to retain a portion of its existing payments equal to the on site storage expenses incurred so that the ratepayers receive the waste management and disposal service for which they are already paying. Without such a provision, ratepayers will continue to pay billions for the existing program, and will also have to pay for interim fuel storage needed to allow for continued reactor operations. The remaining fees paid will accrue in the dedicated Nuclear Waste Fund to finance final storage once DOE has licensed permanent disposal sites at some time in the future.

The CHAIRMAN. Thank you very much, Senator Bryan.
Congressman Bilbray.

STATEMENT OF HON. JAMES H. BILBRAY, U.S. REPRESENTATIVE FROM NEVADA

Mr. BILBRAY. Thank you, Mr. Chairman. I am pleased to be here today to discuss the nuclear waste management provisions of the President's national energy strategy. I am most alarmed, however, by the provisions in S. 570. Consider the impact of this Federal action on the future rights and future safety of our citizens. This section challenges the separation of legislative and judicial powers and upsets the delicate balance of State/Federal authorities.

Subtitle B in title V is an admission that the nuclear waste management policy and democracy do not mix very well. The State of Nevada has been wrongfully maligned and unfavorably characterized as the culprit, responsible for the Department of Energy's failure to complete the site characterization at Yucca Mountain. A recent GAO report that has been referred to by Senator Bryan, reports and clarifies the facts revealing that the Department of Energy failed to stay on schedule due to its own mismanagement of funds, faulty designs, and poor recordkeeping.

I would like to point out that, as a Member of the House Armed Services Committee, we review hundreds of GAO reports per year. Just the other day, the GAO reviewed on the submarine program, run by the Department of the Navy, and after extensive investigation, as requested by the committee, they could not find anything wrong with that program. It was outstandingly run; it was right on schedule; it covered every dollar; watched everything for the taxpayers. We get reports that are good. We get reports that are bad. In this particular report, everything in the report was bad, as far as the DOE was concerned.

Although DOE spent almost $500 million on the Yucca Mountain project in the period from 1988 to 1990—which in a local paper I recently saw complaints by consumer groups across the country claiming that they are being made to pay this money out of surcharges to facilities across this country and the money is just being poured down and wasted.

Specific investigations needed for licensing have not begun. According to the GAO official, the DOE was not ready to begin on-site investigations needed for licensing until 1991 because it, (1), took longer than expected to complete its site investigation plan, and (2), was slow to complete the program for insuring that investigation work meets NRC's quality standards.

In many cases, as Senator Bryan can tell you, and you have heard testimony, we found that the quality standards were not in

place and DOE did not really care. It was not until March 1991 that the NRC had conditionally accepted enough of DOE's quality assurance program. Nevada's refusal to provide permits did not effect new, on-site construction work until February 1991, just about a month and a half ago.

What then serves to justify the extreme measure offered in Subtitle B of Title V? To what extent and what cost is the administration willing to pursue coercive actions against a State based on conflicts between the State and Federal law? In my statement for the record, I quickly trace the legislative history of recent Federal threats to the State authority in the nuclear arena. These Federal attempts to preempt State's rights on issues of such serious public health and welfare should be of grave concern to us all.

Although Congress has never enacted a provision suggesting an intention to preempt State authority to protect public health from radioactive emissions, the perception since 1971, after the *Northern States Power Company* v. *Minnesota* case established a broad doctrine of Federal preemption in the nuclear area. This mistaken perception has been that Congress wished to prohibit States from exercising such traditional State police powers for the protection of public health. In the wake of the reauthorization of the Clean Air Act, establishing the right for State and local governments to set stricter air standards than those set by the Federal Government, the nuclear industry now apparently seeks to abolish the traditional right of State and local governments to protect against radioactive health hazards.

The preservation of State authority to protect public health is necessary now more than ever. As for the grave implications of Subtitle B of Title V of S. 570, I think we owe the people of this Nation greater consideration. This attempt to Federally preempt a State authority in the nuclear arena carries with it severe consequences, both in terms of preserving our democratic principles and in terms of granting States the ability to provide the greatest protection for the public health and welfare.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bilbray follows:]

PREPARED STATEMENT OF HON. JAMES H. BILBRAY, U.S. REPRESENTATIVE FROM NEVADA

Chairman Johnston, I would like to thank you for holding this hearing to review subtitle B of title V of the President's National Energy Strategy.

There are many elements in the NES that are a cause for concern. Within the President's NES, there are restrictive tendencies. What will their impact be on the future rights and safety of Americans? There are proposals within the NES which serve to centralize the power and decisionmaking under the auspices of certain federal agencies binding the hands of critics of the NRC and DOE. I am most alarmed by Sec. 511, the radioactive waste language of the NES.

Sec. 511 of the NES violates existing state and local democratic authority for the sake of expediting characterization of the problematic Yucca Mountain site. The NES would preempt existing state and local laws and regulations during site characterization, allowing only for "consideration of" the views of state and local officials and public comments. State laws, regulations, permit requirements, right-of-ways, etc. will be disregarded if they conflict with federal agency activities. This section challenges the separation of legislative and judicial powers and upsets the delicate balance of state/federal authorities. Sec. 511 is an admission that nuclear waste management policy and democracy do not mix very well. As disclosed at a recent Senate hearing conducted by Senator Graham, a GAO report shows that the state of

Nevada has been wrongly accused by the Administration and the DOE as being obstructionist in the DOE's efforts to characterize Yucca Mountain. In the GAO report it became quite clear that the DOE failed to stay on schedule due to its own mismanagement of funds, faulty designs and record keeping that has greatly hindered the use of the available scientific data. The State of Nevada has been wrongly maligned and unfavorably characterized as the culprit of DOE's failings. Although DOE spent almost $500 million on the Yucca mountain project in the period from 1988-1990, the specific investigations needed for licensing have not begun. I quote from the testimony of a GAO official at Senator Graham's April 18, 1991 hearing on DOE Expenditures on the Yucca Mountain Project, "DOE was not ready to begin on-site investigations needed for licensing until 1991 because it (1) took longer than expected to complete its site investigation plan, and (2) was slow to complete its program for ensuring that investigation work meets NRC's quality standards . . . it was not until March 1991 that the NRC had conditionally accepted enough of DOE's quality assurance program . . . Nevada's refusal to provide permits did not affect new on-site construction work until February 1991." What then serves to justify the extreme measure offered in Sec. 511 of the NES? To what extent and at what cost is the Administration willing to pursue coercive actions against a State based on conflicts between the State and Federal Government?

I would like to run through a quick legislative history of recent federal threats to state authority in the nuclear arena. These attempts by the federal government to preempt state's rights on issues of such serious public health and welfare should be of grave concern to us all.

Although Congress had never enacted a provision suggesting an intention to preempt state authority to protect public health from radioactive emissions, the perception since 1971, after the *Northern States Power Co.* v. *Minnesota* case established a broad doctrine of federal preemption in the nuclear area. The mistaken perception has been that Congress wished to prohibit states from exercising such traditional state police powers for the protection of public health. In 1977 with the Clean Air Act reauthorization, Congress took the opportunity to expressly disavow any such intent to preempt state and local authority. The reauthorization of the Clean Air Act established the right for state and local governments to set stricter air standards for air pollutants than those set by the federal government.

Since the congressional repudiation of Northern States Power in 1977, the Supreme Court has had three opportunities to revisit the issue of federal preemption in the nuclear area. In each of these cases, the Supreme Court upheld the power of the states over claims of federal preemption. In response to this defeat, the nuclear industry now apparently seeks to abolish the traditional right of state and local governments to protect against radioactive health hazards.

The preservation of state authority to protect public health is necessary now more than ever. I think we owe the people of this nation greater consideration as to the grave implications of Sec. 511 of the NES and the adverse consequences it holds for the basic democratic principles and our ability to provide the greatest protection for the public's health and welfare.

The CHAIRMAN. Gentlemen, thank you very much for your testimony. We, of course, had extensive questions and answers last time. I think it is safe to say that we have agreed to disagree on this matter. I think it is also safe to say that every member of this committee believes that Nevada is very, very well represented in this issue, that they have very dedicated and articulate spokesmen. So whatever the result of how it comes out in Congress, Nevada will have had its point of view very well represented.

Mr. BILBRAY. Well, Mr. Chairman, I would like to point out that my mother comes from Louisiana. My family lived there well over 100 years, and as a product of the Louisiana system, through my hereditary, I hope that you will consider us Nevadans as part of Louisiana.

[Laughter.]

The CHAIRMAN. If I had known that you had that Louisiana connection, I would never have proposed this bill.

[Laughter.]

The CHAIRMAN. Senator Wallop, did you——

Senator WALLOP. No questions, Mr. Chairman.
The CHAIRMAN. Senator Domenici.
Senator DOMENICI. No questions, Mr. Chairman.
The CHAIRMAN. Senator Craig.
Senator CRAIG. Just one brief question of maybe both of you, Senator Bryan and Congressman Bilbray. I am concerned, as I think all of us are, that we move in a timely but safe fashion in resolving this issue. The State of Nevada has asked at this moment that some 18 different permits be complied with, I believe, of which only three to date have been tested. In court, it has taken all the way to the Supreme Court on nearly every permit.

Now I can understand procedure and I can understand caution and I can understand being extremely careful, and that is clearly the role of Governor Miller and the State, and it should be. Are we going to find that the good faith offer that the Governor has brought forth is in fact in every case at least in Federal court, if not the U.S. Supreme Court, on the other 15 permits?

Senator BRYAN. Senator, I think the only one that could answer that would be the Governor. I would not presume to speak for him, but he has indicated, as you know, that the applications—there are currently three that I believe are at issue—that those will be processed in accordance with the law, in which the Federal Government will be treated as any other applicant. Those of us in the West certainly understand that far better than most.

And I would respectfully respond to your question by indicating to you what the Federal Government wants is not to be treated as any other citizen or any other applicant. They want to be given preferential treatment. One can hardly defend that as a matter of fairness to other applicants who are applying for similar types of relief, particularly as it relates to the water law.

In effect, what this provision does is to emasculate and destroy State water law. I mean, there can be no question about that. First of all, this is a designated basin. There is a question, a legitimate question; is there water there that would be available that would not impair the vested rights of those who have applications filed and perfected years and years before the Yucca Mountain project was even contemplated.

In effect, if we grant the provisions that are sought here, the State Engineer, the State water appropriations system, which is the same in your State as in mine—first in time, first in right—we might as well throw that out the window. And I do not think that is fair. The Governor has indicated that those applications will be processed as any other applicant and I think that is reasonable. I think his position is fair. To say that the Federal Government should be given preferential treatment does violence and injustice to the rights of individuals.

Senator CRAIG. Well, I would only comment in response to that concern, because I think all of us in Western arid States are very concerned about water, is when we look at the bungled operation that took 9 months and required 22,582 acre-feet of water, 15 miles from the site of Yucca Mountain, versus the Yucca Mountain permit that requires 470 acre feet over a 10-year cycle, that there seems to be a problem here as it relates to 9 months to get something done that is massively bigger and no time to deal with, or at

least a very difficult time, in dealing with something that requires almost a drop of water in comparison.

Now I understand the water issue is important, but there are tests out there right now—there are permits that have been processed within the same basin—that seem to beg a different kind of argument.

Senator BRYAN. Well, I am not familiar with the particular application that you allude to, and perhaps Mr. Loux is going to be here today—is that an application that was filed recently?

Senator CRAIG. That is correct.

Mr. BILBRAY. I think the Senator should realize, though, that as he well knows from southern Idaho in his area that 470 acre-feet in some of those little desert valleys constitutes a lack of water. It is not like Louisiana where you go through every creek and you find water in them. We have creeks that have not had water in 200 years.

Senator CRAIG. I understand that, Congressman. I am talking about one permit for over 22,000 acre-feet over a 9-year time frame, 15 miles from another permit application that requests 400 acre-feet in the same time frame, or similar. So it is not apples and oranges, in this instance. It is a bright, shiny orange and a rotten orange, depending on the perspective.

Senator BRYAN. Senator, you have me at a disadvantage because I am not familiar with the particular application. As you well know, 15 miles away, it may not even be the same basin. I do not know that.

Senator CRAIG. I believe it is.

Senator BRYAN. Because I am not familiar with that application. If you will give me an opportunity to supplement your response in the record, I would be happy to do so. I am not particularly familiar with the application.

Senator CRAIG. That is only fair and I would want to do that, of course.

[The information referred to follows:]

U.S. SENATE,
Washington, DC, June 13, 1991.

Hon. LARRY CRAIG,
U.S. Senate, Washington, DC.

DEAR LARRY: At the May 13, 1991 Senate Energy Committee hearing, you asked me a question relative to the "Bond Gold" water right application. My research has indicated the following:

The permit (water right appropriation) case referenced is that of St. Joe Bullfrog, Inc. (referred to as Bond Gold) and application was for withdrawal of approximately 3,225 acre feet of water per year at a site, near Beatty, Nevada, approximately 20 miles NW of Yucca Mountain. The initial application was filed with the Nevada State Engineer on February 19, 1988. A corrected application, providing additional requested information, was filed March 18, 1988. A Public Hearing on the application was held by the State Engineer, in Beatty, on August 4, 1988.

The National Park Service filed a timely protest of the application with the State Engineer, based upon its concerns for protecting the water rights of the United States associated with Death Valley National Monument, including the detached unit at Devil's Hole, with the possibility of impacting its protected water level, the NPS's primary concern was for springs in Death Valley, within seven miles of the production wells. Within the affected hydrographic unit, it was considered that the Bond Gold withdrawals would be from the Paiute Mesa Groundwater System, and that water levels at Devil's Hole were more affected by conditions in the Ash Meadows Groundwater System.

The NPS proposed to resolve its concerns through development of a groundwater monitor plan, agreed by NPS and Bond Gold, that would give warning if the withdrawals were impacting federal water rights.

On November 4, 1988, the Nevada State Engineer issued the Bond Gold permits, subject to, among other things, the submission of an acceptable groundwater monitor plan by Bond Gold. On March 8, 1989, the State Engineer approved the submitted monitor plan, but further stated, "The State Engineer waives no right to regulate groundwater withdrawals under the Bond Gold permits in the future if deemed necessary."

There are several aspects on which the Bond Gold case and that of the DOE, at Yucca Mountain differ. First, the processing of the DOE application was interrupted by litigation over aspects of the 1987 Nuclear Waste Policy Amendments Act. Had Nevada prevailed in this litigation, there would have been no need for the water appropriation requested.

Second, Bond Gold clearly understood that it was operating at risk. Should the data from the monitoring program suggest unacceptable impacts to federal water rights, the Water Engineer can regulate the water to the extent that the mine may be forced to curtail or cease operation. A similar understanding has never been accepted by DOE for Yucca Mountain activities.

Third, the Yucca Mountain application for 402 acre feet was protested by the National Park Service primarily because of potential affects to the water level at Devil's Hole, which has been established through litigation, resulting in the court order, at a level sufficient to protect the endangered Devil's Hole Pupfish population. The current water level represents a point on a trend of decline that is approaching the threshold level. The water in the basin is currently fully appropriated, therefore granting of this appropriation to DOE may result in adverse and unacceptable impact on prior-held water rights, including those of the federal government at Ash Meadows. This matter requires thorough investigation during processing of the application.

Fourth, the National Park Service clearly wanted the monitor plan to be acceptable to its interests prior to the issuance of a water appropriation by the State Engineer, rather than as a condition for issuance of a water appropriation. That monitor plan, begun in late spring, 1989, was not completed until February, 1991, and not submitted to the Water Engineer until about April 1, 1991.

In sum, the issues of concern, and the circumstances surrounding the Bond Gold and DOE water appropriations applications to the State Engineer are quite different. There is little basis to compare their progress through the permit process with that of DOE due to the many unrelated factors present.

Just for your information, as well, yesterday, the state issued the "surface disturbance" permit for the Yucca Mountain site characterization activities. Once the litigation was resolved, it was processed according to the statutory time frame, as Governor Miller indicated it would be at the Energy hearing in March. Let me know if I can provide further information.

Sincerely,

RICHARD H. BRYAN,
U.S. Senator.

The CHAIRMAN. Thank you very much, gentlemen. Next we have the Hon. Henson Moore, Deputy Secretary of the Department of Energy, and the Hon. Henry Habicht, Deputy Administrator of the Environmental Protection Agency.

Gentlemen, welcome to the committee, and please proceed, Secretary Moore.

STATEMENT OF W. HENSON MOORE, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. MOORE. Thank you, Mr. Chairman. We are pleased to be here this morning to testify on this aspect of the national energy strategy legislation and on the status of the Yucca Mountain characterization project. I am pleased to be here with my colleague, Hank Habicht, who is someone who is a delight to work with throughout the course of this administration.

Dr. Bartlett is also here, who runs the office of the site characterization project, and I would like for his statement and mine to be considered a joint one and we would like to submit written statements for the record.

The CHAIRMAN. Without objection, that will be done.

Mr. MOORE. Mr. Chairman, this past February, President Bush released his national energy strategy that is to be a comprehensive blueprint for America's future energy security. The national energy strategy identifies a very important role for nuclear energy. We look today at electricity and we see the amount of electricity as a mix of our energy going up over the years from 36 percent to about 40 percent by the year 2010, and we predict, by the year 2030, 46 percent of the total energy mix will be electricity.

In looking at the growth of electric generating capacity we need in this country, we are projecting at least 200,000 megawatts additional generating capacity that are going to be needed by the year 2010. That is assuming an aggressive and successful conservation program. About 85 percent of this new 200,000 megawatts of capacity is going to be base load or intermediate units, and we think that nuclear power is going to have to be a part of this energy mix or this country is going to come up woefully short in electricity in a very short time period.

Today, nuclear power provides about 20 percent of our Nation's electricity. The national energy strategy calls for that percentage to remain the same, or maybe slightly increased, but not very much. Nuclear power, as all of us know, provides a reliable, economic, clean source of electricity, is domestically generated and readily available, thereby increasing energy security. We do not have SO_2 or nitrogen oxide or CO_2 or other greenhouse gas problems by the use of this form of energy.

Therefore, we really cannot consider just abolishing nuclear power. That would be an irresponsible thing to do. If we are not going to abolish it, then we have got to see what it is we do then to see to it it is continued, because as everyone knows, right now no nuclear power plants are being ordered and none is under construction. Therefore, if the nuclear power option is to be an option, we have to look at what are the obstacles to it and address those in the national energy strategy.

We see those obstacles as three. The first is nuclear licensing reform, and at this point, I want to commend the Chairman and all the members of this committee, and particularly through virtue of the Wallop amendment, we now have licensing reform in S. 341 that this country badly needs for nuclear power. And this is not just average legislation, this is very important legislation for the future of nuclear power.

So if this legislation becomes law, I think largely the first obstacle to nuclear power will have been solved, as we will have nuclear licensing reform.

The second obstacle is that of the certification of a standard reactor design. The national energy strategy targets the certification of four advanced designs by the year 1995. The Department of Energy believes this is possible, and these will be before the Nuclear Regulatory Commission for certification by that time.

The subject of today's hearing deals with the third problem. The third obstacle to nuclear power is what are you going to do with the waste. This is something that just a week ago I was in France discussing with the French. It is a problem that faces this country; it faces every country that uses nuclear power. The problems here are not new; the problems here are not indicative only to this country or our problems.

It is one of the preeminent challenges facing both the Nation and the world. Everyone agrees on the value of nuclear power; everyone disagrees on what you do with the waste. The technical people, however, have agreed for a number of years now that the solution is permanent long-term storage of waste in an underground repository, and that seems to be the opinion of all of the advanced countries in the world using nuclear power. Not just our own.

In 1987, Congress directed an investigation of a particular site, Yucca Mountain, and asked the Department of Energy to determine whether this is a suitable site for a repository. We are fully ready. We have a plan in place, now. We have the scientists onboard, so we are ready both scientifically, managerially, and programmatically to move forward. And despite Congress' direction, we have not been able to do so.

I have personally been to Yucca Mountain within the last month, and I have met with the scientists out there. I have looked at the problems that people are throwing up and talking about and have talked to those scientists about them. I would urge anyone who doubts or wonders or is concerned about this program to go to Yucca Mountain. When I was there, I was informed that only one Member of Congress had actually been there, and he had been there the weekend before I was there.

Members of Congress, Members of the Senate, who have a problem need to see the site, talk to the world's premier volcanologist, who is working on this program; talk to the world's premier geologists, who are working on this program, and hydrologists who are working on this program; and they will tell you that these are premier scientists, most of whom are not Federal employees, that are under contract to this Department from institutions such as the University of California and many others, who are there to determine scientifically if this is a possible site for a repository. And to delay letting them do their work is a political problem, we submit, not a scientific or a technical problem. It is a political problem.

We presently have three permits pending with the State, as you have heard. One has been pending since January 1988, with no action; one since April 1989, with no action; and one since July 1988, with no action. These are the first three. We expect 15 more like them.

The first permit, dealing with the area of surface disturbance, or an air permit, has been pending since January 1988, normally takes the State a month or two to consider the submission process. Ours has been pending, now, for 3 years and 4 months. An underground injection control permit has been pending for 2 years. We cannot find a precedent for how long it normally takes, but we believe that there has really been no action taken on this permit. The water appropriation permit has been pending for 2 years and 8

months. It normally is processed within 10 months, and no action has been made on this one.

The Senator from Idaho mentioned the Bond Gold Mine operating 15 miles from the Yucca Mountain site, which requires a great deal more water, a great deal more disturbance of the air. Its permits were granted within 3 months in the case of the air and 9 months in the case of the water. Meanwhile, ours still languish.

We want to believe that the State will move expeditiously and deal with us as anyone else. So far, we have not been dealt with as anyone else. Our permits have languished and have been largely ignored, and we believe that there has got to be some reason for that which is primarily a political reason, not a technological one.

The legislation before this committee is legislation that we feel is necessary to see to it that we are allowed to move on with this project as the Congress intended. The environmental requirements remain the same. The EPA or other appropriate officials would be the ones to grant the permits instead of the State, where the State has been given that authority by the Federal Government. The permitting authority merely shifts back to the Federal Government.

We do not wish to be absolved, or to in any way be allowed to not have to deal with any environmental requirement, as we fully intend to meet them all. It is just that we have got to be able to have some way of having these permits dealt with in an expeditious manner so we can determine whether or not this site is a proper site and report back to the Congress, as you have ordered us to do.

Mr. Chairman, the not-in-my-backyard syndrome is a very serious one. We have met it recently in the State of Idaho. We have seen it in the State of New Mexico. We have seen it in the State of Colorado. We have seen it in the State of Nevada. We see it all across this country. And the problem is a very serious one.

But at some point, when the Congress orders that action be taken in the nuclear field, at some point the Congress has to be responsible for seeing to it that its word preempts that of not-in-my-backyard. That is essentially what we are asking for here today.

At this time, I would like to share the podium with Mr. Habicht and then certainly would have Dr. Bartlett here available for questions and comments, as well.

[The prepared statements of Mr. Moore and Dr. Bartlett follow:]

PREPARED STATEMENT OF W. HENSON MOORE, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Committee: I appreciate the opportunity to testify before you today on the nuclear waste storage and disposal provisions contained in Subtitle B of Title V of the Administration's National Energy Strategy Act (S. 570). Before specifically addressing the need and justification for this legislative initiative, I would first like to review the historical perspective of the Civilian Radioactive Waste Management Program at the Department of Energy (DOE) and provide an update on the current status of our efforts to proceed with the Congressionally mandated site characterization of the Yucca Mountain site in Nevada, and of the ongoing search for a volunteer host for a Monitored Retrievable Storage facility (MRS).

BACKGROUND

After many years of national debate concerning the process, timetable, and funding for developing this Nation's high-level radioactive waste management system,

Congress took a major step in December 1982 by enacting the Nuclear Waste Policy Act (NWPA). The NWPA established a national policy for high-level radioactive waste disposal, a step-by-step process, a timetable, a funding mechanism, clear responsibilities for those Federal agencies charged with implementing the law, and specific roles for participating and affected parties in developing the waste management system. Congress took these actions to resolve the national problem created by the continuing accumulation of high-level radioactive waste and to provide for permanent disposal of that waste in a way that protects worker and public health and safety, and the environment.

By passage of the NWPA, deep geologic disposal for spent nuclear fuel and high-level radioactive waste was designated by Congress as the environmentally appropriate means of permanent disposal for the United States. This national decision was consistent with recommendations made 25 years earlier by the National Academy of Sciences, and consistently advocated since then by knowledgeable scientists in this country and in other nations also faced with the challenge of high-level radioactive waste disposal.

Five years after passage of the NWPA, and following extensive geologic and environmental data evaluation on nine sites in six States, Congress once again acted, this time to direct, among other things, that DOE's Office of Civilian Radioactive Waste Management (OCRWM) focus detailed scientific investigations on only one site—Yucca Mountain in the State of Nevada—to assess whether or not that site is suitable for development of the Nation's first geologic repository.

In late 1988, DOE issued a detailed site characterization plan for carrying out site investigations at Yucca Mountain. Issuance of this document followed public hearings in Nevada and receipt of comments on a consultative draft of the plan from the State of Nevada, the Nuclear Regulatory Commission (NRC), the nuclear industry, EPA, and the public. Then, in November 1989, Secretary Watkins conducted an extensive review of the program, and submitted a "Report to Congress on Reassessment of the Civilian Radioactive Waste Management Program." The Report contained a three-point plan which centered on restructuring OCRWM, taking initiatives to gain access to Yucca Mountain to continue the scientific investigations needed to evaluate the site's suitability for a potential repository, and proposing an initiative for establishing an integrated monitored retrievable storage facility (MRS) with a target for spent fuel acceptance in 1998.

The management issues have been solidly addressed. Following Mr. Bartlett's confirmation as Director, Office of Civilian Radioactive Waste Management in April 1990, we implemented a number of direct actions that are very important to the program's forward progress. As part of this progress Dr. Bartlett reorganized OCRWM to replace the previous matrix management with direct lines of responsibility, authority and accountability. In this reorganization, the Office of Geologic Disposal replaces the Yucca Mountain Project Office and reports directly to the Director of OCRWM, rather than to the Nevada Operations Office. The Yucca Mountain Project was renamed the Yucca Mountain Site Characterization Project Office and is now a division of the Office of Geologic Disposal. As part of the basis and planning for this reorganization, we established a Management Systems Improvement Strategy which involves a more rigorous program approach based on systems engineering principles. In preparing for a new Mission Plan Amendment, we have conducted a series of workshops that involve interested and affected parties in developing a set of strategic principles that OCRWM will use to refocus and implement its mission under the NWPA, as amended. The Mission Plan Amendment is scheduled to be issued at the end of this year.

We are now ready to initiate new scientific investigations as soon as we are allowed to proceed. Quality assurance audits have been conducted both at Headquarters and the Yucca Mountain Site Characterization Project Office to assure that the program meets NRC requirements and ensures high quality in all activities at all levels of the program. Study plans have been completed for the first set of tests that would be initiated with the start of new scientific investigations—those on geologic stability in Midway Valley, and in Trench 14 on the origin and age of calcite silica deposits. In addition, effort is underway to identify a prioritized set of tests that would result in determination of the suitability of the Yucca Mountain site as a potential disposal location as early as possible.

In response to concerns raised by NRC, the Nuclear Waste Technical Review Board, the State of Nevada and others, the Secretary directed the evaluation of present and alternative designs for the Exploratory Studies Facility. Late in January, preliminary results of that evaluation were available and are now being used in design studies to support a final decision later this year.

Through the combined efforts of DOE and contractor staff OCRWM has established its readiness to proceed with Midway Valley and Trench 14 site characterization, and with carrying out its responsibilities under the NWPA.

Concurrently, the efforts of the independent Nuclear Waste Negotiator—Mr. David Leroy—are progressing. We are optimistic that his activities will result in identifying a willing host for an MRS. In a recently signed Memorandum of Understanding, Mr. Leroy and Secretary Watkins have established the initial procedures under which the Department will provide the Negotiator with information and assistance.

Now, before I focus on the problems we have encountered in trying to proceed with scientific investigations at Yucca Mountain, I would like to discuss the current court situation.

STATUS OF LITIGATION

On March 4, 1991, the U.S. Supreme Court denied the State of Nevada's petition for a writ of certiorari in which Nevada sought review of the unanimous decision of a panel of the Court of Appeals of the Ninth Circuit in the case of *Nevada* v. *Watkins* (S.Ct). In this case, Nevada challenged the constitutionality of the NWPA, and the authority of the Secretary of Energy to proceed with the site characterization of Yucca Mountain. The Ninth Circuit Court held that Nevada's attempted "veto" of the Yucca Mountain site was invalid under the terms of the NWPA, and was preempted to the extent that it stood as an obstacle to the purposes and objectives of the NWPA.

The decision of the Supreme Court also facilitated progress in *DOE* v. *Nevada* (D.Nev.), an action brought by the Department to compel Nevada to process three permits needed to proceed with site characterization at Yucca Mountain.

In a hearing on that case on March 20, 1991, the Judge directed that, by April 22, 1991, the parties were to submit a stipulation and proposed order which would provide that the three applications which are pending would be expeditiously processed in accordance with State law on the merits and would not be denied for any reason already disposed of by the Ninth Circuit Court.

In response to the Judge's direction, attorneys for the Department of Justice (DOJ) and DOE prepared a draft stipulation agreement containing specific timeframes for the processing of the three permits in full accord with the Court's order and the Judge's comments during the hearing. A copy of the transcript of the March 20 Court hearing is attached (Attachment A) for the record as is a copy of the DOJ/DOE draft stipulation (Attachment B). It is important to note that neither the Court order nor the draft agreement call for the approval or disapproval of the applications—merely the processing of them in accordance with prescribed State regulatory procedures and timeframes. The draft stipulation was delivered to the Nevada Attorney General on April 3.

On April 16, counsel for Nevada delivered the State's version of a stipulated agreement to DOJ/DOE attorneys. A copy is attached (Attachment C) for the record. Counsel for DOE determined the State's stipulation to be inadequate and objectionable for at least two key reasons: (1) the State refused to be bound to take final actions within the timeframes provided by State law and regulation, asserting only that the applications would be processed "expeditiously;" and (2) the State's stipulation covered only two of the three permits at issue (air quality and underground injection) and ignored the third application dealing with water allocation which had also been addressed by the Court. It quickly became apparent that there could be no mutually acceptable stipulation agreed to by both parties by the April 22 deadline initially imposed by the Court. Therefore, counsel for DOE filed a formal motion with the Court for an order that would require the State to process all three permit applications within specific timeframes. The Court has scheduled a hearing for today, May 13.

In the past, the normal time required by the State to process permits such as these has varied. Recent air quality permits have been processed in from two weeks (Nevada Gold Mine filed 7/2/86 and was approved with eight stipulations on 7/16/86) to three months (Bond Gold Mining filed 5/88 and was approved with six stipulations on 8/88). Recent water appropriations permits have been processed in 5 5 months (Lavender County Recreation Board filed 9/4/87 and was approved on 2/22/88) to 11.5 months (Smith and Floyd RV Park filed 7/25/88 and was approved 7/9/89). In the case of our water appropriation request, it should be remembered that our permit is for a well that already exists at the site.

Subsequent to the Supreme Court's decision of March 4, and just days before the March 21 hearing before this Committee, the State offices responsible for processing

these permits invited DOE to resubmit them for consideration. DOE complied immediately. Since the resubmission, however, the State has informed DOE that the application for the Underground Injection Permit is "incomplete" and considerable additional information will be required before processing can continue, even though no new information was requested by the State previously. On April 19, DOE filed what it believed was a complete response to this request. The State recently requested additional information concerning the air quality permit, to which DOE plans to provide a complete response within two weeks. There have been no further requests for additional information for the water allocation permit application, at this date.

Mr. Chairman, in spite of the State's contention that it is proceeding "in good faith" and in accordance with Court decisions, the Department believes that such is not the case. By imposing continuous and unreasonable demands for additional information in order to "perfect" the applications, the State can drag out this process for months—if not years. And then, if the permits are denied, DOE will be forced to comply with the State's procedures for appealing such denials to the State courts—time-consuming procedures—before DOE could appeal to the Federal Court system again.

It must be remembered that these permits are only the first of some approximately 15-20 that will be required to complete the site characterization process over the next 7-8 years. Further, in its brief before the Ninth Circuit Court of Appeals, the State has avowed its intention to ". . . exercise every power and every aspect of its inherent jurisdiction to frustrate the Federal program . . .", has demonstrated a history of delay and litigation, and could conceivably use such tactics to delay the program indefinitely into the future. [A list of the additional permits is attached (Attachment D).] In fact, at the hearing before this Committee on March 21, 1991, Nevada Governor Miller refused to assure the Committee that the State would no longer employ dilatory tactics to prevent the work at Yucca Mountain. And, just recently, at the International High-Level Radioactive Waste Management Conference in Las Vegas, Governor Miller indicated that Nevada's position on Yucca Mountain remains the same ". . . except for one thing: our resolve has stiffened."

The Department has made every effort, and continues to make every effort, to interact with the State in a responsible and responsive manner. Despite these efforts, the State of Nevada refuses to participate in key workshops and in public meetings held in the State to address public interests and concerns even though it accepts Federal grant funds to oversee our investigation in Nevada. As Dr. Bartlett stated in a March 29, 1991, letter to the Nevada Nuclear Waste Project Office, we believe that the State's independent oversight activities can make important contributions to the Yucca Mountain site characterization effort. With the State's independent efforts supplementing and complementing those of the Department, the prospect for an expeditious determination of the suitability of Yucca Mountain for a high-level radioactive waste repository is enhanced. We further indicated that we would like to work with Nevada in this regard. The State has not responded to this or any other like offer, and continues to spurn our efforts. The State has repeatedly refused to enter into discussions regarding consultation and cooperation agreements with the Department, as well as discussions concerning a benefits agreement which is authorized under the NWPA, as amended. This continued resistance by the State of Nevada to meaningful interaction with the Department not only diminishes our ability to resolve an important national issue, but also thwarts the will of the Congress of the United States.

NATIONAL ENERGY STRATEGY ACT (S. 570)

In order to attempt to expedite activities and be assured that future activities needed to evaluate the suitability of the Yucca Mountain site can proceed without further unwarranted State obstructionism, DOE has submitted language described earlier relating to Yucca Mountain as part of the National Energy Strategy Act (S. 570). Section 511 of the legislation would allow DOE to conduct site characterization activities without the need to obtain permits from a State, a local government, or an Indian Tribe. DOE's obligation to follow environmental requirements, both State and Federal, and other applicable legal requirements would not be removed, however. Rather, the requisite administrative and monitoring authority merely would shift from the State to appropriate agencies within the Executive Branch of the Federal Government. Also the Department would be required to consider the views of States, local governments, and Indian Tribes regarding their laws affecting site characterization activities. Thus, our requested legislation would allow the essential access to the site while still ensuring that environmental and other applicable regulatory requirements are met. There is also a provision that would allow the State to

regain its authority should it be willing to cooperate in good faith and enter into an agreement with the Department governing site characterization.

A key element of the National Energy Strategy (NES) is maintaining the nuclear energy option by removing undue regulatory and institutional barriers to nuclear power use. The NES identifies an important role for nuclear energy as part of a balanced array of energy sources for meeting the Nation's energy needs, especially the growing demand for electricity. Clearly, an important ingredient to this growth is the ability to demonstrate greater progress in managing and disposing of the waste we already have. The principal obstacle to such progress is currently the continuing inability of DOE to undertake needed activities incident to characterizing a candidate site for a potential geologic repository due to the actions of the State of Nevada. Until this impediment is removed, DOE will be unable to fully carry out its mandate to find an appropriate way to deal with the Nation's growing accumulation of high-level radioactive waste in a timely manner, and the potential for the continuing development of nuclear power identified in the NES may not be realized. Hence, we believe the proposed legislation is not only needed and justified, but it is the appropriate approach to solving an important national problem and safeguarding the future of nuclear power.

PROGRAM OUTLOOK

The present program activities at Yucca Mountain cannot be sustained during a period of protracted litigation. We would not be able to maintain meaningful work and morale for present personnel, whose skills are needed for active pursuit of the site evaluation mission. We would have to stop work in many areas and convert to a long-range research and development program. If this happens, DOE will have failed to execute its mission, and obstructionist efforts to thwart the will of Congress will have succeeded.

Failure to proceed at Yucca Mountain will have other important adverse consequences. In a program with a budget such as ours, delay has serious cost consequences. For example, OCRWM's program activities are funded through Nuclear Waste Fund payments made by electric utilities with nuclear facilities, who collect such fee amounts through rates charged to their customers. As OCRWM costs increase as a result of Yucca Mountain delays, the impact of such increases is ultimately borne by these customers. In that regard, we already have indications from the nuclear industry, the electric utilities, and the National Association of Regulatory Utility Commissioners, which represent the ratepayers who provide funding for the Nuclear Waste Fund, that strong action, including litigation and proposals for legislation, can be expected if the program continues to languish. The efforts of the Nuclear Waste Negotiator to find a site for an MRS facility or an alternative candidate repository site may also be adversely affected by delays at Yucca Mountain. The MRS is an essential part of the integrated waste management system and is necessary to our objectives of timely waste acceptance, system flexibility, and system reliability. As a response to this problem, Section 512 of the National Energy Strategy Act would remove existing statutory linkages between the construction of the permanent repository and the construction of the MRS facility.

DOE takes its responsibilities under the NWPA very seriously. Secretary Watkins has been directed by the President to work closely with industry and State governments to proceed swiftly toward a safe and environmentally acceptable deployment of a means of storing and disposing of spent fuel and high-level radioactive waste.

Since the first National Academy of Sciences report on this subject in 1957, there has been a continuing international technical consensus that this country and other nations are capable of safely disposing of spent fuel and high-level waste in deep geologic repositories. While the safe management of high-level waste is one of the Nation's pre-eminent environmental challenges, there is a technical consensus that it is solvable.

Congress took action in 1982 and again in 1987 for DOE to proceed towards that goal. DOE is ready scientifically and managerially to proceed with new site investigations. I would like to emphasize again that we do not in any way seek exemption from environmental protection or any other applicable regulatory requirements. We seek only assurance of the opportunity to proceed with our mandated responsibilities for evaluation of the Yucca Mountain site. We ask that we be treated only as any other citizen.

To provide that assurance, it is imperative that Congress act again, and now.

PREPARED STATEMENT OF DR. JOHN W. BARTLETT, DIRECTOR, OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT, DEPARTMENT OF ENERGY

Mr. Chairman, I am please to be able to discuss briefly the status of the waste management program, the obstacles we currently face in attempting to move forward to achieve progress, and the national importance of enacting the provisions contained in the NES Act relevant to radioactive waste management.

One of the four goals of the NES for nuclear power is the achievement by 1995 of suitable progress on high-level nuclear waste solutions. It is imperative that the United States establish an effective nuclear waste management program in order for nuclear power to remain a major energy contributor.

By passage of the Nuclear Waste Policy Act of 1982, Congress designated deep geologic disposal for spent nuclear fuel and high-level radioactive waste as the environmentally appropriate means of permanent disposal for the United States. This national decision was consistent with recommendations made 25 years earlier by the National Academy of Sciences, and consistently advocated by knowledgeable scientists in this country and in other nations, as Mr. Moore has stated.

Five years after passage of the 1982 Act, and following extensive geologic and environmental data evaluation on nine sites in six States, Congress once again acted, this time to direct, among other things, that the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) focus detailed scientific investigations on only one site—Yucca Mountain in the State of Nevada—to assess whether or not that site is suitable for development of the Nation's first geologic repository.

Under Secretary Watkins' direction, a major focus of DOE's effort has been to gain access to Yucca Mountain to continue the scientific investigations needed to evaluate the site's suitability for a potential repository. We have taken a number of direct actions that are very important to the program's forward progress including establishing a high caliber quality assurance program, identifying a prioritized set of tests, and completing the study plans for those tests. We are now fully ready to initiate new scientific investigations aimed at determining whether or not Yucca Mountain is suitable as a repository site as soon as we are allowed to proceed.

However, despite these major advances and repeated court decisions rendered in our favor, we are still unable to gain access to Yucca Mountain. Most recently on March 4, 1991, the U.S. Supreme Court denied the State of Nevada's petition for a writ of certiorari in which Nevada sought review of the unanimous decision of a panel of the Court of Appeals of the Ninth Circuit in the case of *Nevada* v. *Watkins* (S.Ct). The decision of the Supreme Court also facilitated procedural progress in *DOE* v. *Nevada* (D.Nev.), an action brought by the Department to compel Nevada to process three environmental permits needed to proceed with site characterization at Yucca Mountain. Despite these decisions, the State of Nevada continues its relentless obstruction, especially through the use of the state permitting process. DOE has seen no progress in the State's processing of the three permits required to initiate new scientific investigations. And just recently, at the International High-Level Radioactive Waste Management Conference in Las Vegas, Governor Miller indicated that Nevada's position on Yucca Mountain remains the same and I quote, ". . . except for one thing: our resolve has stiffened" end quote.

Therefore, in order to attempt to expedite activities and be assured that future activities needed to evaluate the suitability of the Yucca Mountain site can proceed with the State's close oversight, and without further State obstruction, DOE has submitted language previously described by Mr. Moore relating to Yucca Mountain as part of the National Energy Strategy Act (S. 570). We have every intention of protecting the quality of the environment, as our proactive efforts to date have demonstrated. We seek only assurance of the opportunity to proceed with our Congressionally-mandated responsibilities for evaluation of the Yucca Mountain site. We believe enactment of the proposed legislation is essential for us to be able to proceed.

Mr. Chairman, we need your help. Congress has acted by passing laws to protect the environment. Some of those laws conflict. Congress also acted to protect the public health, safety and environment regarding nuclear waste management. I urge the Committee to help us carry out the will of Congress by passing the NES Act.

The CHAIRMAN. Thank you very much, Secretary Moore.

Mr. Habicht.

STATEMENT OF F. HENRY HABICHT II, DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. HABICHT. Thank you, Mr. Chairman. With your leave, I would submit my prepared statement for the record and just offer a summary briefly of our views on section 511 of S. 570.

The CHAIRMAN. Without objection.

Mr. HABICHT. Mr. Chairman and Members, as you have heard, the scope of section 511 is strictly limited to the work necessary to characterize a potential site for a high-level radioactive waste repository. As we read it, section 511 would transfer all authority to implement and enforce Federal environmental protection statutes to EPA from the State of Nevada and would preempt State, Tribal, and local laws, but this would limited solely to the issues of site characterization.

In brief summary, Mr. Chairman, this looks to us like a workable solution to a difficult and important problem. The problem also appears in many ways to be unique because of delays to fact-finding that you have heard about in spite of Congress' designation of Yucca Mountain for site characterization.

Clearly as a country, we must develop safe long-term waste disposal options that are far preferable to the multiple sites that we have now. Yet in order to make informed public decisions, we must have the facts which Department of Energy has thus far been unable to develop. So to ensure expedited development of the facts, the Federal Government would proceed on the limited basis set out in section 511, if that is enacted into law.

For the record, we understand the following are the key facts about section 511. First, all Federal laws would be fully complied with. Second, EPA would have all necessary authority and capability to vigorously oversee the implementation of the laws by the Department of Energy and its contractors. Third, the State would be fully consulted in this process, as would the public throughout all key elements of site characterization. And, fourth, these provisions do not effect the long-term decision on a permanent, underground repository, or the enforcement and administration of the law at a site, if and when one is selected.

I assure you, this administration does not lightly support preemption. It is an issue I have dealt with for many years, stemming from my days at the Justice Department. However, the controversy over a permanent repository has been enormously intense and protracted, and the controversy has to have the benefit of the facts if it is ever going to be resolved.

Development of these facts is also necessary to ensure that we can deal with the waste from nuclear power generation, which is an important part of our energy mix, in the soundest possible way.

So in conclusion, Mr. Chairman, with the understanding that this is not a precedent and it is limited in scope to this unique problem that we have here before us, we at EPA support section 511 and will work to ensure that all applicable laws and all applicable safeguards are faithfully implemented.

Thank you very much.

[The prepared statement of Mr. Habicht follows:]

PREPARED STATEMENT OF F. HENRY HABICHT II, DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Good morning Mr. Chairman and members of the Committee. I am Hank Habicht, Deputy Administrator of the Environmental Protection Agency. Thank you for the opportunity to present EPA's views on Section 511 of S. 570, the Administration's National Energy Strategy Act of 1991.

Section 511 amends the Nuclear Waste Policy Act of 1982 to facilitate the Department of Energy's site characterization activities for a high-level radioactive waste repository at Yucca Mountain, Nevada. This section would allow DOE to conduct site characterization activities at Yucca Mountain without the need to obtain permits for such activities from the State of Nevada, a local government, or an Indian tribe.

Specifically, Section 511 would withdraw approval under federal environmental statutes for the State of Nevada to exercise enforcement and administrative authority over site characterization activities. Such authorities would now be exercised directly by EPA under federal law. The section would also preempt, in favor of federal law, all state, tribal and local laws which impose requirements for permits, rights-of-way, licenses, certifications and approvals.

Mr. Chairman, EPA endorses this provision because it provides a workable solution to a very difficult and important problem.

As a matter of general policy, the Bush Administration supports and strongly defends programs of cooperative federalism, whereby federal and state authorities enforce parallel regulatory schemes. Under such programs, once the state and federal authorities reach agreement on the substance of the regulatory requirements, the federal government will look to the State to be principally responsible for enforcement under State law. We believe that the States, in many instances, are better equipped and more capable to carry out public policy programs, particularly environmental protection programs, than the federal government.

In fact, it is a fundamental assumption underlying all three federal environmental statutes most likely to be affected by Section 511—the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act—that the states will assume principal responsibility for enforcing, as part of state law, all or part of the regulatory program delegation of the statutes. This is a principle which the EPA and the Administration strongly endorse.

Nevertheless, the Administration has concluded, in this very limited situation, that the requirement to proceed with site characterization studies at Yucca Mountain mandated by Congress in the Nuclear Waste Policy Act outweighs the general presumption in favor of State administration and enforcement of laws to protect the environment.

I would note that the approach envisioned by Section 511 is analogous to provisions found in all federal environmental statutes which authorize the President to exempt unilaterally federal agencies from the requirements of those statutes when he determines it to be in the paramount interest of the United States to do so. The Administration believes that it is in the paramount interest of the United States to proceed on site characterization work at Yucca Mountain as directed by Congress in the Nuclear Waste Policy Act. However, rather than take unilateral action to waive all environmental requirements, Section 511 simply modifies the process through which those requirements are enforced. The legislation ensures that the substantive requirements of our nation's environmental laws will be met.

As DOE has testified, the State of Nevada has consistently and effectively thwarted efforts to conduct the scientific investigations mandated by the Nuclear Waste Policy Act. In the absence of a provision such as Section 511, it is possible that those investigations will never occur. Failure to move toward identification of an appropriate site for deep geological disposal of spent nuclear fuel and high-level radioactive waste means an indefinite continuation of the undesirable practice of storage of such waste at multiple sites.

In light of this situation, EPA endorses Section 511 as the appropriate response. As we ask you to support this provision, we want to assure the Committee that there will be no relaxation or minimization of enforcement of federal environmental statutes and regulations which govern DOE's site characterization activities at Yucca Mountain. The Administration is committed to ensuring that EPA has all of the necessary authority and capability to vigorously oversee DOE's activities and to ensure that such activities comply with both the letter and the spirit of the federal laws protecting human health and the environment. We also believe that this provision should not establish a precedent for future activities at Yucca Mountain or

elsewhere. The Administration remains committed to State preeminence in administration and enforcement of environmental statutes.

Mr. Chairman, this concludes my remarks.

The CHAIRMAN. Thank you very much, Mr. Habicht.

Secretary Moore, in our last hearing, we had the Governor and other officials, including the legislative delegation, and we went through some five pages of quotations from the State of Nevada. I will just give you one, which kind of gives the flavor of what the Governor and others have said over a period of years. This statement is from the January 1990 Nevada's brief, filed in the 9th Circuit Court of Appeals, in which they said, quote: "It should be obvious that the State will exercise every power in every aspect of its inherent jurisdiction to frustrate the Federal program."

Now, does that statement fairly characterize the attitude of the State of Nevada on characterization of the Yucca Mountain site?

Mr. MOORE. Yes, Senator, it does. We do not know what to make. All we can do—we hear the statements and we simply look at the inaction on the permits.

The CHAIRMAN. What the State said is that they will exercise every power to frustrate the Federal program.

Mr. MOORE. That is what I am saying. Is that I hear those statements and I look at the inaction on the permits and I assume there is some connection, because we certainly have not seen action on the permits and therefore we have no reason not to believe the political statements.

The CHAIRMAN. So in other words, in your view, Nevada's action has been to attempt to frustrate this program at every turn.

Mr. MOORE. Action has certainly not been to treat the Department of Energy or the Federal Government as they would treat other permitees. We have not been treated the same way and there has been tremendous delay. And there is no secret of what the State administration feels about this project, and so we assume that there is a connection and that we have thus far seen no evidence to cause us to believe they intend to treat us any differently in the future.

The CHAIRMAN. And so that, obviously then, this kind of legislation is necessary.

Mr. MOORE. At some point. The legislation allows the State to be the enforcer of certain Federal environmental laws, and at some point if the State is not going to carry out that authority as the Congress intended, then it needs to be taken back and given back to the Federal officials to have them administer that law. That is essentially what we are asking for here.

The CHAIRMAN. Has anything happened to make you more optimistic that permits may be issued by the State in a more timely manner?

Mr. MOORE. Not really. We greeted with some hope when they asked us to resubmit certain permits, which we did very timely, but we are not getting the kind of rapport, the kind of give-and-take between the State agency and between the Department that you would expect in a permitting process, so at this point we have no concrete information to lead us to believe that things are going to be any different.

The CHAIRMAN. So in your judgment, this legislation is absolutely necessary?

Mr. MOORE. Mr. Chairman, as Mr. Habicht said, we take this very seriously. This is something we thought about for a long time before we proposed to the Congress and proposed within the administration.

It was not my history in public service to be in favor of trampling upon State's rights, but what we are dealing with is a case of where a State is going to or not going to abuse its power, and in this particular case we feel that is the situation as it now stands, and therefore we have no recourse but to come back to the Federal Government.

If you intend for us to be able to characterize this site we must have certain permits if we are to follow the environmental laws, and we intend to follow those laws, and therefore this legislation is necessary for us to be able to get the necessary permits, or be told what it is we have to do to get the necessary permits to be able to do the site characterization work.

The CHAIRMAN. Mr. Habicht, does EPA have mechanisms in place for carrying out this program?

Mr. HABICHT. Mr. Chairman, I think that we have mechanisms in place that can be readily adapted to this program. We are working on a number of client compliance activities with the Department of Energy in other contexts. We have also been working on the waste isolation pilot plant in New Mexico and other projects, so that we think that the mechanisms are there.

The CHAIRMAN. If characterization were successful and the site were found to be suitable, could you carry out the permitting process for the construction phase as well?

Mr. HABICHT. I believe we could. We would obviously have to look at the resource situation and other activities at the agency, as we always do when we acquire new responsibilities, but I think the agency is certainly technically capable of those activities.

The CHAIRMAN. This legislation, as it has been submitted by the administration, simply applies to the site characterization phase, which of course involves no storage or experimentation with waste. It is simply the characterization of the site. But it seems to me, if the legislation is necessary for characterization, it may be necessary for the period of construction as well. Would you not agree with that, Secretary Moore?

Mr. MOORE. Certainly if things remain the same that would be the case. We would hope that at the point at which we are able to characterize the site as being unacceptable, that determination would solve the problem. If we are able to characterize it as being acceptable, hopefully at that point the officials, say, of the State of the Nevada may change their mind and may be willing to then cooperate, and we are certainly hoping they will change their mind at any moment and cooperate.

So you are right, if we go to the construction stage at this site, and if things do not change, yes, I would assume you would need that same change. We are not asking for that now. We think we would prefer to do this just at the characterization stage and see what happens.

The CHAIRMAN. Thank you. Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

Secretary Moore, Mr. Loux, who is the director of the Nevada Agency for Nuclear Projects, makes a statement in his statement which basically says if the State had granted DOE's permits it—DOE—would not have been able to use them. Would you agree with that? Have you not been able to use these permits?

Mr. MOORE. With these permits we could have been on the site taking action before the present time. If we don't get these permits we will have to sit down and go through with you, and with the staff, exactly when we think it might be prudent to go on and begin certain work. But certainly the delays we are taking on now cannot be justified on any kind of assumption that we have not got our act together.

Senator WALLOP. Well, it seems a silly argument for refusing to grant the permits. I mean, if you have not been able to do it, it seems like they would have been able to demonstrate DOE's alleged incompetence by the State merely granting the permits, but for them to say that this is a reason not to grant them, amongst others, is a bit bizarre.

Mr. MOORE. Well, you are absolutely correct.

For instance, we have the problem of whether or not certain formations were caused by water coming from beneath the surface, or from the surface down. Well, the only way to determine that, although the scientists out there think they have got more than enough evidence now to be certain they can answer the question that it came from surface water dripping downward and therefore that is not a problem with the site, we would like to dig in the trench deeper, just to be doubly sure.

We have to have a permit for that. We have not been given the permit. So how can you solve the scientific problem that is being thrown at us by certain people in the State without the permit to be able to prove that?

I disagree when people say that we are not ready and therefore we should not have the permits. That is a way of simply saying we do not want this project constructed and we are going to frustrate it and use any excuse we can to deny the permit.

Senator WALLOP. Insofar as you know, the water permit that is sought is a lawful use of water under Nevada law?

Mr. MOORE. Yes, it is. As a matter of fact, the well is already there. It has been there for years. It was approved for use once before.

It has been used for a number of years, but out of an abundance of trying to follow the State law we went back in for a permit for a well we already have and intend to use for this project, and said would you permit us using the well for this purpose, and that permit has been sitting, now, for some several years.

So there are some people who say we really did not even have to ask for a permit. The well was already there, it is already in existence, it has already been used. Why go through the process? But we were trying to meet the letter of the law of both Nevada and all of the Federal environmental laws. So that is an example of where we really do not see the good-faith working relationship that we normally experience in other States and would like to see in Nevada.

Senator WALLOP. Can you give us your best estimate of the increase, if any, of the cost of the program so far that has been occasioned by Nevada's actions?

Mr. MOORE. Senator, we will try to get that for you for the record. It would be just a guesstimate if I tried to answer it this time. There certainly has been an increased cost by the delays, and we will try to compute that for you and get that for the record.

[The information referred to follows:]

The increase in program costs to date that can be easily quantified and that are directly associated with the State of Nevada's intransigence in granting the necessary permits for planned site characterization activities is relatively small because of the many alternative activities it has been either necessary or possible to conduct prior to the actual start of new site characterization work at the Yucca Mountain site. Incremental quantitative costs associated with delays in the receipt of permits are approximately $100,000 for offsite drilling expenses and for leasing heavy earth moving equipment to support prototype drilling activities conducted out of state.

Thus far, the costs to the program of the State's actions, while significant, are not easily translated into dollars and cents at this time. With no permits, we were unable to proceed with drilling or trenching operations at the Yucca Mountain site. We were unable, therefore, to drill a prototype borehole to conduct a site-specific test of the new equipment and techniques developed during 1989 for site investigations requiring dry drilling and core retrieval. This fact will ultimately delay progress in the surface-based testing program. In addition, without permits, we were unable to begin surface disturbing site studies, including trenching activities, even though all of the participants actually involved in such work had had their QA plans accepted by the NRC as early as October 1989. The biggest cost, however, and also probably the least quantifiable, has been the slow loss from the program of at least 50 principal scientists and engineers—people who were instrumental in planning the site investigation program described in the Site Characterization Plan (SCP) that was issued for formal review and comment in December 1988. These key technical personnel, because of their participation in or knowledge of earlier studies related to the Yucca Mountain site, were expected to play a major role in conducting the investigations described in the SCP. Although their technical expertise has been or can be replaced, the loss of key technical personnel has meant an irretrievable loss of program knowledge. In addition, the budget reductions resulting from our inability to conduct planned investigations resulted in the net loss of over 200 people from the Yucca Mountain Site Characterization Project. The overall loss in program resources will slow the progress of site characterization to the extent that the replacement of personnel with appropriate expertise lags behind program needs.

Senator WALLOP. One thing other. If the statutory linkages between the monitored retrievable storage and the repository are removed, does the Department have the capability to site and build an MRS while simultaneously proceeding with the testing of the Yucca Mountain site?

Mr. MOORE. Yes, Senator. As a matter of fact, we think that is critical to the problem at hand, that we need to be able to move to begin to negotiate with States over a suitable MRS to get that underway.

We think that can be done by 1992, and begin construction we think and can be completed by 1998 so there is a place, a safer place to store the waste coming out of the civilian reactors than leaving them in the pools that are running out of space at the present time, so we think it is necessary to disjoin them and allow us to be able to move, and we are ready and we do have a plan in hand and are ready to move with that.

Senator WALLOP. Mr. Habicht, you have the infrastructure to assume the task of permitting the site characterization activities at Yucca Mountain?

Mr. HABICHT. Yes, we have the technical capability and the basic infrastructure.

Senator WALLOP. How long do you anticipate that it would take your agency to set up procedures to begin the permitting process?

Mr. HABICHT. Senator, I would be happy to supply that for the record.* I think if this law passes we would move quickly to put a plan in place and secure whatever resources and capability we would need to move forward.

Senator WALLOP. But you have regulations that are currently in place to administer all of the Federal statutes that apply to the Federal site characterization at Yucca Mountain?

Mr. HABICHT. Yes, Senator. From our review thus far, it appears as though the site characterization activities involve fairly straightforward questions under our existing statutes, and we have a good deal of experience in dealing with those provisions.

Senator WALLOP. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Domenici.

Senator DOMENICI. Thank you, Mr. Chairman. Let me take just a little bit of time—I think it is kind of appropriate that the two of you are here together—DOE and EPA—and I want to ask about standards for high-level waste depositories, or repositories.

As you know, with reference to the waste isolation pilot project and some of the very difficult environmental issues, it seems that EPA has become aware of the fact that the country has a serious problem if we do not find a place to put the transeuranic waste. That is a different issue, but in that regard it seemed that accommodation to expedite and get some things done took place. From what I can tell there was nothing but the highest degree of concern on the part of EPA.

But now let me raise an issue. High-level waste standards, which are not necessarily needed for the Yucca Mountain site for 2 or 3 years or more because we are in the characterization mode may very well be needed, interestingly enough, for a low-level transeuranic site called Waste Isolation Pilot Project, and I assume you both know what I am talking about.

I recall the history of the high-level waste standards, and I might ask you first, are you aware of what has happened since 1987 with reference to those standards?

Mr. HABICHT. Yes, I am, Senator. I am aware that there has been litigation and there has been a good deal of technical activity. We have invested quite a bit at EPA in reviewing both public and judicial and other comments about the process.

Senator DOMENICI. Now, my recollection indicates that they were completed prior to 1987, but went to court and the court remanded to the EPA in 1987 that process.

Now, it is not going to matter—I want both of you to know, it is not going to be conclusive, that many experts say the remand was not on technical standard grounds but on process grounds, which many are now telling the Department of Energy, your experts are telling the Department, the standards are okay. They are not going to be any different. It is just the process was what was remanded.

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* EPA will provide response directly to Chairman Johnston.

But you understand, they are not in place, and you understand that WIPP is going through its process of are they going to do research up front to determine the propriety of the site for long-term depository quality, and you understand that an issue is, where are the standards?

I recall now, further history, and I want to make sure EPA knows that we found this problem of not getting them back on board at least 2 years ago, and you all asked for more money, and we gave you more money. In fact, with Senator Johnston's assistance in the appropriations process we gave the EPA what they wanted as additional resources to get the standards moving, the process of promulgation moving.

Interestingly enough—and Mr. Chairman, you have been very involved in the waste isolation project legislation and considerations. EPA now says that it may be 2 years away, yet, from the final promulgation of the standards.

Repeat, that has no impact on Yucca, but it certainly could have impact elsewhere, and so I would like to know, and incidentally DOE and Mr. Moore can comment if he would like, but they are being told to operate off the standards that were promulgated and remanded. Some refer to it as the old standards. Is that not right, Mr. Secretary?

Mr. MOORE. Yes, Senator.

Senator DOMENICI. Now, what is going to happen is, the question is going to be, why not wait until the standards are completed, and I want EPA to know that this could end up being a very serious issue in spite of, perhaps, EPA and DOE and others saying the standard is really not at issue, but rather the process. So my question is, without cutting any corners and doing things appropriately, how long do you think it might take to get these things done if we gave you all the resources you needed, which we are not talking about huge amounts of money? Can you expedite that 2-year cycle or not?

Mr. HABICHT. Well, Senator Domenici, based upon recent information that I have gotten about the status of the WIPP project, we are currently looking at getting a proposal out by sometime in the mid- to late-1992 range. Of course with the public comment process and the formalities associated with the process, that is how we arrive at the 1993 date.

The important point is, we are looking to as early in 1992 as we can to get a formal proposal out on the street. We have been even exploring as a way of expediting, or making this final, proceeding in a negotiated rule-making, because the issues are now fairly focused.

We have worked very hard over the last couple of years to deal with both environmentalist's concerns, so there is absolute confidence in this, as well as dealing with concerns among others about the implementability and understandability of the standards.

I think we have made progress, and I think I can certainly give you a more up-to-the-minute response for the record, but we believe that we can get a proposal out in the 1992 time frame and then move as quickly as we can from there to making it final.

Senator DOMENICI. Mr. Chairman, I make this record today not because—as I repeat myself, not because this is a current Yucca

Mountain problem—I mean, sooner or later you have to have, unequivocally have to have, the standards for Yucca Mountain, but clearly that is a long ways off.

So it is not an issue that pertains itself to the subject today nor exclusively to WIPP, but sooner or later we have got to get these standards finished and valid in all respects, substantively and otherwise, and that is why I raise the issue today, and I thank you for your answer.

If I read you right, you are moving as expeditiously as you think you can, and you have the resources to move in that manner, if I read you right, and you do not think you can move beyond the time frame you have just discussed in terms of getting them finalized?

Mr. HABICHT. That is my understanding from recent briefings on the subject, although I would, with your leave, like to submit a response for the record with more specifics.

[Subsequent to the hearing, EPA supplied the following information:]

Question 1. What is the status of EPA'S reconsideration of 40 CFR 191 "Environmental Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes?"

Answer. In 1987 the U.S. Court of Appeals for the First Circuit remanded 40 CFR 191 to the Agency for reconsideration. There were three major bases for the remand. First was the question of whether geologic disposal of radioactive waste is a form of underground injection and, thereby, subject to the requirements of the Safe Drinking Water Act. Second was the inadequacy of the Agency's explanation of the 1000-year duration of the individual and groundwater protection requirements. And third was a directive to repropose the ground-water protection requirements for notice and comment.

Specific fault was found with only two areas of the standards, the individual protection requirements and the ground-water protection requirements. However, the court remanded the entirety of the disposal portion of the standards (40 CFR 191 Subpart B) because of the potential interconnections between these two subsections and the rest of the disposal requirements. Therefore, EPA must now repropose all of 40 CFR 191 Subpart 8 and must consider all currently available information pertinent to the entire subpart.

Since the court remand, the Agency has been evaluating the variety of issues relevant to the repromulgation of 40 CFR 191. In an attempt to communicate our intentions early and receive input from interested parties, we have circulated working drafts of our revisions to the standards. To date, we have circulated three working drafts for comment. The most recent version was placed in the docket on April 29. A copy is enclosed for your information.

In response to a recommendation received from the Nuclear Waste Technical Review Board, the Agency is considering the possibility of proceeding with revisions to 40 CFR 191 through a regulatory negotiation or some other consensus-building process. Such processes would involve a variety of constituencies (e.g., U.S. Department of Energy, U.S. Nuclear Regulatory Commission, states, industry groups and environmentalists) in an attempt to reach an agreement among interested parties on appropriate revisions to the standards.

EPA has contracted with the Conservation Foundation for assistance in soliciting the views of potential parties and expects to decide whether to proceed with a regulatory negotiation or other consensus-building process in August.

Question 2. Describe the steps involved in the repromulgation of 40 CFR 191, the anticipated schedule for repromulgation and the possibility of expediting the process with additional resources.

Answer. Steps that remain to be taken in repromulgating the standards include additional technical analysis of a number of issues relevant to the standards, moving the standards through the Agency's internal review and approval process, obtaining clearance from the Office of Management and Budget (OMB) to issue a proposed standard, issuing a proposal for public hearings and comment, conducting any additional technical work that may be necessary following the public comment

period, moving a draft final through the Agency's internal review process, and obtaining clearance from OMB to promulgate a final standard.

The schedule for repromulgation of 40 CFR 191 depends in part on whether the Agency proceeds with a negotiated rulemaking or other discussion process.

If we proceed with a negotiated rulemaking or other discussion process, we would expect to issue a proposed rule by August 1992 and a final rule by November 1993.

If we do not proceed with a negotiation process and, instead, follow more traditional Agency rulemaking procedures, we would expect to issue a proposed rule by May 1992 and a final rule by May 1993.

The resource level proposed in the 1992 request to Congress will be adequate to meet this schedule. The schedule is contingent on a variety of decisions not yet made, in a multi-step process as described above, and therefore additional resources would not significantly expedite the process.

Senator DOMENICI. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Senator Craig.

Senator CRAIG. Thank you, Mr. Chairman.

If you would be very responsive in getting back to Senator Domenici the comments to your last response, I would be very interested in that also, especially if additional resources moves the time line along, because I have one of those problems in Idaho that will begin to be resolved when you get your standards out and satisfy Senator Domenici, so that it lessens the virus that has inhabited his State—that not-in-my-backyard virus that inhabits all of us westerners at some time or another.

Mr. HABICHT. I understand.

Senator CRAIG. If not everyone else.

Senator DOMENICI. Senator, would you yield?

Senator CRAIG. I would be happy to.

Senator DOMENICI. I want the record to reflect that is his characterization of the people in New Mexico. I do not think they have any virus. I think they are very healthy and very hardy, and very willing to help their Government in all respects, and thank you very much, Senator.

Senator CRAIG. I am just, Mr. Chairman, trying to find out at what point the willingness really becomes more willing.

Secretary Moore, are you suggesting in S. 570 that you want to be the big truck driver that comes rolling down over Nevadans and then you will stop and pick them up after you have run over them and take them to the hospital so that at least they will feel better after the accident?

Mr. MOORE. No, Senator, we have no concept of doing that. We have tried very hard. You cannot imagine how uneasy we came to this decision. This is not something we wanted to come to. The idea of trying to circumvent the State authorities with whom we work in every other State, and we think we work well with, is not something that we came to lightly.

I heard Senator Bryan's comments as I got in at the tail end of his testimony, in talking about the water situation, and I can understand to a westerner, having been over the Yucca Mountain site, I can understand how precious water is.

We have absolutely no intention of just paying no attention to these issues and that EPA would not regulate us. This is something the State would still have input into. We have in this legislation that EPA and the Secretary have to pay attention to and have to take into consideration the State's comments and concerns that are not being reflected in State permits if this legislation is passed by

the appropriate Federal authorities, and I assume water would be one of those.

The amount of water we are talking about is a great deal less than was just permitted in the adjacent mining site. I think it is 4.6——

Senator CRAIG. Well, it is billions of gallons versus millions of gallons.

Mr. MOORE. Exactly. 4.6 versus .2 is the ratio. What we are seeing here—I was there and I looked at it, and we saw one situation of where the experts that we have in the employ as a consultant to the Department of Energy on studying the desert tortoise has a permit and is allowed to study that anywhere on the Nevada test site except the Yucca Mountain site. The same expert is not allowed to do the study there. He has not received his permit from the State yet.

So this is the kind of thing we are dealing with. It is a situation of where the State is just doing what it can to prevent this project from moving forward, and we have come to that conclusion very begrudgingly, but the point is that when we come before you next year in oversight hearings, and you say, what progress have you made on Yucca Mountain characterization, we are going to have to tell you from here on, none.

We have done all we can do in-house now, really, to prepare for it, to get the plan of action ready, to go back over it again, and to look at what critics have said of the program. We have been doing that now for 2 years, and we have made changes, and the program was not as you would have it or I would have it when we inherited it. It is ready now, and the point is, we are being held up now for reasons we do not understand.

If the permitting offices were coming back to us and saying, your permits are not complete, or your permits are erroneous, or your permits—the people preparing them do not know what they are doing, you need to get some people in here that know how to deal with permits, then we would understand and we would do that, and we would comply.

But that is not what we are hearing. What we are hearing is just silence, and that tells us that there is no real intent to pursue these permits, and it leaves us in a position that we have to do what this legislation before you asks to be done. Somebody with responsibility has got to carry out the law that the Congress passed, and those environmental laws. If the State will not do it, then EPA should do it, and as you have heard from Mr. Habicht, is willing to do it.

Senator CRAIG. In combination with what you have just said, Mr. Secretary, and the question that I will ask Mr. Habicht that concerns me, that I think all of us from western States, especially large public land States like Nevada or Idaho are extremely concerned about, what is a State right, recognizing that the Feds have run over us on occasion more often than not over the years, but also what is a workable relationship that really is compatible, because that is the better kind, ultimately.

What is a State right, State primacy versus the sovereignty of the Federal Government and its ability to move in given areas?

With that in mind, Mr. Habicht, EPA delegates responsibilities in Federal programs to the States quite often, do they not?

Mr. HABICHT. Yes. Yes, we do.

Senator CRAIG. What happens when a State does not perform under a set agreement?

Mr. HABICHT. Well, the rules vary among different statutes.

Senator CRAIG. I am talking about in the broad nature of the relationship between EPA in this instance and a State government.

Mr. HABICHT. If there is a set of minimum provisions that the States need to adhere to vis-a-vis a regulatory program and enforcement program, and those are not being met in traditional EPA programs, EPA has responses that range from promulgating State requirements for the States to stepping in and actually bringing Federal enforcement actions over and above State enforcement activities. And the ultimate sanction is the withdrawal of the State program authority, meaning the EPA could take back from the State the authority to implement.

Senator CRAIG. And has.

Mr. HABICHT. And has, yes.

Senator CRAIG. So——

Mr. HABICHT. As rarely as possible, but it has happened, yes.

Senator CRAIG. Is this what you are referring to in the broad sense when in the latter portions of your testimony you mentioned that this was not precedent setting or you did not view it as precedent setting—the legislation?

Mr. HABICHT. Our concern, Senator Craig, is twofold. First of all, when we are dealing in areas such as water appropriations—water management—local land use management and those kinds of issues, even EPA is particularly sensitive to State and local prerogatives. And we know there is a concern among States that this might be the beginning of some set of dominoes vis-a-vis Federal preemption. And our understanding, and I think the whole Administration's strong understanding, is that this is absolutely necessary in this narrow case. It does not signal a change in our aversion generally to preemption.

Secondly, we hope that in future environmental enactments, for example, dealing with groundwater—and this gets to another subject and I will not take much of the committee's time, other than to say that we hope, as we deal with issues like groundwater in the future, and there will be a Federal presence and there is a Federal presence in this area, that we can have a system that may have some necessary basic Federal standards, but leaves much more room—even more room than existing law—to the States to make decisions.

Senator CRAIG. Well, in a concern about Federal preemption, in the 18 permits that are current that the State has required the Federal Government, in this instance DOE, to make application for, within those 18 have you examined them? Are you familiar with them?

Mr. HABICHT. I have looked at a list of the permits, yes, sir.

Senator CRAIG. Of those 18 and in dealing with the legislation in 570, section 511, I think, how many of those are you talking about where EPA would become a participant in or a grantor of—I mean are we talking about a total takeover in this instance?

Mr. HABICHT. For this process, I know there are a number of other Federal agencies that have permitting authority. We are talking basically about air quality permits, certain water quality permits, such as national pollutant discharge elimination system permits, and waste permits. They are very limited. I would expect them to be a minority. I am not sure. It is a significant number but probably a minority of the 18 permits would be Federal laws that the EPA would generally have the authority to administer if the State did not have delegated authority. As I understand it, the only authority that EPA is getting is the authority to implement the laws that we already implement that might actually be delegated to Nevada in this case.

Senator CRAIG. Well, that is the point that I was hoping you would make because of my concern for a Federal preemption over something that had been historically a State's right or a State responsibility and how that line gets drawn, vis-a-vis that section of this legislation.

Mr. MOORE. Senator, if I could add, I share fully your concern. And as I said before, this is not something this Administration came to lightly. It is our hope that as this legislation courses through the Congress, something might happen that would cause us to be able to come to the Congress before it is finished or before it is signed by the President and say it is not necessary either through the court action that is pending our there or through the voluntary change of attitude of the State officials out there that would not be necessary. The State has very capable people in their permitting offices and we have great respect for them.

The Federal Government, the taxpayers, are paying for them to have scientists in their employ to oversee every step of this characterization. And those are capable people. There is no reason this could not be done at the State level. And we have every hope it will be, but it has not been so far. And we have asked for this legislation, and perhaps before the President signs it, it might be unnecessary.

Senator CRAIG. Thank you. Thank you both.

The CHAIRMAN. Thank you very much, gentlemen.

Next, we have a panel composed of Robert R. Loux, Executive Director of the Nevada Agency for Nuclear Projects on behalf of the State of Nevada; Thalia Dondero, who is a Commissioner on the Board of County Commissioners of Clark County in Las Vegas; Stephen Bradhurst, Repository Program Manager of Nye County in Tonopah, Nevada; and Dr. E. Linn Draper, who is Chairman, President, and CEO of Gulf States Utilities Company, testifying on behalf of the American Committee on Radwaste Disposal.

Lady and gentlemen, the hour is getting late and we would like to have time for questions, so if you could summarize your testimony in about 5 minutes, then we will have time for some exchanges.

So let us begin with Mr. Loux.

STATEMENT OF ROBERT R. LOUX, EXECUTIVE DIRECTOR, NEVADA AGENCY FOR NUCLEAR PROJECTS, CARSON CITY, NV

Mr. Loux. Thank you, Senator, I appreciate the opportunity to be here as you well know. And we are always pleased to be before your committee.

The national energy strategy relies on the continued viability of the commercial nuclear power industry to assure this Nation an adequate electrical energy supply into the 21st century. Proponents of the future development of nuclear power continue to maintain that the industry viability is threatened by the failure to close the nuclear fuel cycle through the resolution of the problem of permanent nuclear waste isolation.

The 1982 Nuclear Waste Policy Act called for a political balance and technically rigorous site screening process for selecting candidate repository sites. And in 1987, after years of political manipulation by the Department of Energy in the siting process, none of the early site screening deadlines of the Act having been met, the Congress adopted the Nuclear Waste Policy Amendments Act. The amendments for stated reasons of cost savings selected Yucca Mountain as the only site to be characterized for repository license application to the Nuclear Regulatory Commission.

Also the second repository siting program was halted. These actions together broke the national commitment of the 1982 Act to a technically based site screening and political fairness in site selection. The Nuclear Waste Management Provision of the National Energy Strategy preempts Nevada regulatory jurisdiction as State's statutory authority over the Department of Energy's site characterization activities at Yucca Mountain. The DOE stated need for this selective preemption is that Nevada has injured the Nation by its obstructionism resulted from the litigation of elements of the 1987 amendments.

The claim that Nevada has unreasonably delayed for at least 2 years DOE's progress in characterizing this site by refusing to process unneeded State environmental permit applications while a litigation was proceeding. That litigation is now resolved. The DOE applications are now being processed by State regulators in accordance of State laws. The Governor has testified here and we have certified to the court.

Meanwhile, the U.S. General Accounting Office, as you have heard earlier, reported to Congress last month and DOE officials have confirmed that DOE itself, not the State of Nevada, has been the cause of the delay to date, because until February 1991, DOE was simply not ready to begin any work at Yucca Mountain. Therefore, the stated basis that the Department of Energy's initiative for the preemption of Nevada for the proposed nuclear waste management provision of the National Energy Strategy has been discovered to be without justification.

Furthermore, such preemption promotes in return a part to the health and safety abuses associated with the past policy of DOE self-regulation now known to be the cause of the scandalous condition of the defense facilities. It has also established in a dangerous precedent for resolving the future State/Federal conflicts whenever there is a claim of State obstruction to the Federal purpose.

Mr. Chairman, Nevada believes that section 511 of the administration's national energy strategy should be deleted as it is completely and totally unnecessary. Two other points I would like to make briefly—number one, to clarify a couple of statements earlier—number one, Nevada has not litigated any part of the regulatory process regarding environmental permits to date whatsoever. None of that has ever been initiated by the State of Nevada.

Secondly, the silence referred to by permitting agencies I guess is somewhat refuted by the stack of correspondence that has occurred between the Department of Energy and the Nevada Permitting Regulations since March of this year when the agencies actually began their consideration of the permit applications. There are 15 or 20 pieces of correspondence between Department of Energy applicants and the State regulators, indicating what information—what other additional information needs to be recovered.

The State of Nevada is acting within the law. It is processing permit applications as would any other applicant under the State process and DOE has been treated like any other applicant exactly as they have asked.

With that, Mr. Chairman, I will conclude my formal statement. Of course, I will be pleased to answer your questions.

[The prepared statement of Mr. Loux follows:]

PREPARED STATEMENT OF ROBERT R. LOUX, EXECUTIVE DIRECTOR, NEVADA AGENCY FOR NUCLEAR PROJECTS

The National Energy Strategy Act relies on the continued viability of the commercial nuclear power industry to assure this nation an adequate electrical energy supply in the 21st century. The proponents of nuclear power, at least since the mid-1970's, have maintained that the viability of this electricity source is threatened by our failure to close the nuclear fuel cycle through finding a final resting place for the highly radioactive wastes generated by the industry.

The Nuclear Waste Policy Act of 1982 represented the culmination of years of debate over development of a national policy for high-level nuclear waste isolation. It established geologic disposal as the preferred means of isolating these long-lived, extremely dangerous wastes, and mandated a politically balanced and technically rigorous site screening process to select the locations to be licensed by the Nuclear Regulatory Commission as high-level nuclear waste repositories.

This committee is well aware of the political manipulation, scientific mismanagement, and deceptive window-dressing imposed on the site selection process by the U.S. Department of Energy since adoption of the 1982 Act. It is the reason we are here today, once again wrangling with the question of how to fix the fatally mangled national program for dealing with modern society's most lethal byproduct.

I am here today to tell you that the proposed Nuclear Waste Management provision of the National Energy Strategy Act has finally elevated the issue to a level that tests our nation's foundational ethics and democratic ideals.

The 1987 amendments to the Nuclear Waste Policy Act amply demonstrated our inability to fairly, and with sound technical reason, pursue a resolution of the national nuclear waste problem. The entire nation ganged up on one state, which has not contributed to the problem, to serve as the vessel of tranquility for its own excesses. It even offered so-called benefits payments in return for our agreement to heap further injury on ourselves.

Nevada has refused to quietly accept its assigned role as national scapegoat. At least two members of committees of jurisdiction in the United States Senate, Senators Johnston and Simpson, have publicly stated that were their states in Nevada's position, they too would protest as loudly and firmly as we and our citizens have.

The National Energy Strategy Act seeks to finally silence us in an effort to disguise the failures of others who are most responsible for creating the perception of a national crisis.

The basis of the Nuclear Waste Management provision of the National Energy Strategy Act is the DOE's widespread broadcasting of the myth that Nevada has severely injured the nation by frustrating the national purpose as announced by the

Nuclear Waste Policy Act amendments. We have been held in contempt for having delayed the progress of the DOE program to the extent that it is now at least twelve years behind the schedule for beginning disposal mandated by the 1982 Act. This is simply not true.

It is a matter of record that Nevada, with overwhelming public support, exercised its legislative and executive prerogative to deliver its Notice of Disapproval of repository site selection to the Congress after its adoption of the 1987 Nuclear Waste Policy Amendments Act. The 1987 amendments created an uncertainty for us regarding what action by the government constitutes the selection of the Yucca Mountain site as a repository. We did not want to forego the opportunity to submit our notice if, in fact, the adoption of the 1987 amendments was later interpreted to be the site selection action.

It is also a matter of record that we declared moot, and refused for over two years, to process DOE's needed environmental permit applications while we were litigating the validity of our ignored notice of disapproval. In March of this year, the U.S. Supreme Court declined to hear our appeal of the lower court ruling that our unanswered notice of disapproval, and thus a veto of the Yucca Mountain repository, was premature and therefore not valid. Since that time, we have notified DOE that we are now prepared to process its resubmitted permit applications, and that procedure is going forward today. This activity in no way signals that our resolve in opposing this intrusive project has weakened. It only indicates that one selected avenue for relief has been exhausted.

Meanwhile, since at least November, 1989, the Secretary of Energy has advertised that Nevada's obstruction has been the cause of the DOE's progress in the characterization of Yucca Mountain. He also has advertised the need to defuse our opposition through legislative measures, such as the current preemptive provision of the National Energy Strategy Act, if litigation does not render us ineffective in our opposition.

On March 21, 1991, Nevada Governor Bob Miller told the Senate Energy and Natural Resources Committee in a hearing that the actual cause of program delay has been the Department of Energy's lack of readiness to begin site characterization work at Yucca Mountain. If the State had granted DOE's permits, it would not have been able to use them. Quality Assurance is the primary element of the DOE's program causing the delay. Even to date the program is not fully in place to be applied to the entire planned site characterization program. Without an acceptable quality assurance program, any data collected must later be qualified for use in a license application to the NRC.

In the same hearing, Secretary Watkins, when questioned, confirmed the Governor's statement regarding the cause of DOE's program delay, and said that it was not until February, 1991, that the Department was ready to begin site characterization activities.

Then, on April 18 of this year, the General Accounting Office further confirmed the Governor's statement in a hearing of the Senate Environment and Public Works Committee, Subcommittee on Nuclear Regulation. The GAO reported:

> Nevada's refusal to provide permits did not affect new on-site construction work until February 1991 because, as discussed above, DOE was not ready to begin this work until then. According to project officials, the state permit issue must be resolved by March 1992 or it will delay the schedule for investigating the site.

Furthermore, the GAO has documented that after more than a year of a reanalysis suggested by the State of Nevada, the Nuclear Waste Technical Review Board, and the NRC, DOE has rejected its earlier plan for the location and configuration of the Exploratory Shaft Facility. The Secretary's schedule calls for beginning ESF site work in May, 1992, but to date there is no final location and design decision for the facility. Once designed, this facility will require additional federal and state permits after review by the State, the NRC and other interested parties. It appears likely that the schedule for beginning the ESF will also have to be revised by the DOE because of a lack of readiness.

Despite the DOE's longstanding and widely announced claims of the effectiveness of Nevada's frustration and delay of the program, it is now common knowledge that the DOE, itself has been the cause of the delays. At the same time, and with the sure knowledge within the Department of Energy of the real cause of the delays, the Department inserted the Nuclear Waste Management provision into the National Energy Strategy, loudly proclaiming to the Congress and American public the reason, albeit false, for its need.

Nevadan's stern opposition to the project is in significant part due to an ever growing and continually reinforced lack of public faith and trust in the Department

of Energy. Nevadans are clearly not alone with this reaction, which daily is fueled by new revelations of abuses at DOE's defense nuclear facilities.

The preemptive nature of the proposed provision on Nuclear Waste Management in the bill provides the DOE with a return in part to self regulation, the very policy that permitted the scandalous abuses at its defense nuclear facilities. This alone is sufficient reason for no faith or trust in the Department.

The further insult to the nation by DOE, and clear evidence that the Department cannot be trusted, is the discovery and subsequent admission of the false basis of its insistence that preemption of Nevada's authorities and laws is necessary.

It is certainly within the authority and capability of the Congress to adopt the Nuclear Waste Management provision of the National Energy Strategy Act. But, in doing so there must be a clear understanding that, first, it establishes a dangerous precedent for future attempts at solution of health and safety problems at federal facilities whenever the host state is even alleged to be obstructive in its legitimate administration of applicable state laws and regulations. And second, the Congress would be enacting a law which its original and most enthusiastic proponent—the United States Department of Energy—proposed on the basis of a self-serving falsehood.

Adoption of the proposed preemptive Nuclear Waste Management policy by the Congress under the current circumstances likely would precipitate nothing less than a nationwide crisis in public confidence in all levels of our democratic government.

The CHAIRMAN. Thank you very much.

Ms. Dondero.

STATEMENT OF THALIA DONDERO, COMMISSIONER, BOARD OF COUNTY COMMISSIONERS, CLARK COUNTY, NV

Ms. DONDERO. Thank you, Mr. Chairman. My name is Thalia Dondero, representing Clark County, Nevada. Of course, that includes five cities; the city of Las Vegas, North Las Vegas, Henderson, Boulder City, and Mesquite, of almost 800,000 residents. And I personally have been around since there have been about 10,000 residents. And I appreciate today to have the opportunity to be able to testify on the proposed implementation of the national energy strategy as being considered in this 570.

My comments will be brief and focused on title V, related to nuclear power and specifically subtitled B, regarding nuclear waste management. I would also like to submit for the record more detailed comments with respect to a number of other issues associated with nuclear waste program, a few of which I will mention at the conclusion of my comments.

The United States has an obvious need for a national energy strategy. Recent events in the Persian Gulf provide strong reminders of the necessity of our Nation to be energy independent. The strategy provides a number of good objectives and to reduce our dependence on foreign sources of petroleum and other fuel needed to maintain strength and independence.

There are a few recommendations, however, that should be scrutinized carefully to ensure that they are not counter to other worthwhile objectives that grant States and local communities the responsibility for the health, safety, and welfare of their citizens. And the President's national energy strategy contains nuclear waste provisions which if enacted into law would eliminate an important component of Nevada's oversight capability—the ability of Nevada and other States to oversee environmental impacts that is linked not just to our ability to study DOE's technical program, but also the environmental permitting process that has been vested in State and local authorities.

As reflected in a recent resolution of the Clark County Board of County Commissioners, the County firmly opposes any suggestion that the State or local government permitting authority be suspended in order to facilitate the siting of a nuclear waste repository in Nevada. The blanket suspension of Nevada's permitting authority would set a very dangerous precedent for the rights of all States and local governments to regulate the environmental effects of nuclear and other hazardous facilities.

My concerns are with the respect to subtitle B, Nuclear Waste Management Repository Site Characterization, Section 511, which proposes to allow a Federal agency to have that authority to decide issues associated with health, safety, and welfare of the citizens of Nevada. The proposed legislation would, therefore, circumvent the current States permitting authority. The permits to which I am referring of course relate to those specified by the State of Nevada for the proposed Yucca Mountain nuclear waste repository site.

The proposed legislative provisions do not provide encouragement that the health, safety, and welfare of the citizens of Nevada will be adequately considered by the Federal agency. I would think, Senators, that a similar attempt by the Federal Government in your State would be met by equal opposition. Words in the legislation such as minimize significant environmental effects, consider the views of the State, and et cetera, and others can be interpreted liberally.

Environmental issues should not be open to arbitrary interpretation. The issues, however, are larger than Yucca Mountain. White the legislation notes that this will affect only the site characterization phase of the Yucca Mountain program, precedents created by this legislation could obviously be employed for other projects in other States.

It is important that permitting or environmental issues remain the responsibility of the States and local communities and not be given to the Federal Government which is generally far detached from the sources of potential problems. There has been much talk that the State is obstructing the release of permits from the Yucca Mountain site. I have recently learned, however, that the Department of Energy was not eligible to conduct site characterization work until February of this year. Several of its plans were at that time finally approved by Nuclear Regulatory Commission.

The State is currently processing the permits in the same manner that it would act on permits for other parties in this jurisdiction. We, therefore, do not believe obstruction has taken place. The State and local community should therefore not be penalized. The health and safety issues should not be dismissed in such a cavalier fashion.

We hope that you will reconsider this portion of the energy strategy. Such actions will dilute the oversight responsibilities of the State of Nevada on this project which would have significant impact on our State. Several other items with respect to oversight should also be mentioned.

As you are aware there are currently three designated effective counties; Clark, Lincoln, and Nye. And the recent actions by the Ninth Circuit Court, however, have designated two other counties—Esmeralda County in Nevada and Inyo County in Califor-

nia—that are eligible for effective status. Five others in Nevada may be designated as well. All the effected counties should therefore have the capabilities to conduct oversight activities in a manner specified by the nuclear waste policy acts as amended.

I would like to close by saying that I hope my comments and the comments of my fellow panelists are considered carefully. These are obviously important issues to the State of Nevada and to the local communities. They should be important to you as well since similar issues could also affect your States and citizens. And I would like to thank you for being able to testify here today. And I would like to tell Senator Craig I liked his idea of looking at reprocessing, because I think it is one of the answers.

Thank you.

[The prepared statement of Ms. Dondero follows:]

PREPARED STATEMENT OF THALIA DONDERO, COMMISSIONER, CLARK COUNTY, NV

Mr. Chairman, Members of the Senate Committee on Energy and Natural Resources, Clark County, Nevada is pleased to have this opportunity to provide testimony on the Nuclear Waste Program. As you know, Clark County is a contiguous county to Nye County, where the Department of Energy is considering a site for the nation's first high level nuclear waste repository. We have been designated an "affected local government" as authorized in the Nuclear Waste Policy Amendments Act of 1987 (NWPAA) and have established a comprehensive oversight program for the Yucca Mountain repository site.

Because of our proximity to the site, we are very much interested in the potential impacts of a repository on the health and safety of our citizens and on their economic and social well being. Our oversight program is keyed to two important areas of impact assessment—the effects of the repository on the environment, and the effects of the repository on the people of Clark County.

The President's National Energy Strategy contains nuclear waste provisions which, if enacted into law, would eliminate an important component of Nevada's oversight capability. The ability of Nevada, and other States to oversee environmental impacts is linked not just to our ability to study DOE's technical program, but also to the environmental permitting process that has been vested in State and local authorities. As reflected in a recent resolution of the Clark County Board of County Commissioners, Clark County firmly opposes any suggestion that state or local government permitting authority be suspended in order to facilitate the siting of a nuclear waste repository in Nevada. The blanket suspension of Nevada's permitting authority would set a very dangerous precedent for the rights of all states and local governments to regulate the environmental effects of nuclear and other hazardous facilities.

A second key component of our oversight program is the socioeconomic impact assessment program. Clark County has set in motion a major socioeconomic assessment study to ensure that we are prepared for all contingencies in the event a repository is sited at Yucca Mountain. We have hired a nationally respected contractor to undertake the study and have recently established a Peer Review Committee composed of recognized experts in a variety of disciplines to ensure that our socioeconomic work meets professional and scientific standards. The product of these studies would, upon commencement of site characterization activities, form the basis of report to be submitted to the Secretary under Section 116(c)(2)(B) of the NWPA, as amended.

In carrying out the oversight program mandated by the NWPAA of 1987, Clark County is concerned with both the technical and financial independence of its activities. Congress, in formulating the provisions of the NWPAA, recognized the importance of providing local governments with the ability to independently review DOE activities and determine potential impacts from the proposed program. DOE, however, after providing an initial period of independence, has systematically expanded its control over affected local government oversight of DOE activities. Not only has local government technical control gradually been eroded though increasingly detailed review and approval procedures for oversight expenditures, but DOE has also systematically reduced funding for local government oversight activities.

The principal objective of this oversight testimony is to urge Congress to provide sufficient independence for affected local governments to fulfill their responsibilities

under NWPAA. The two essential components of such independence are: (1) direct control over our own technical studies; and (2) sufficient funding to carry out these studies.

The President's proposed Nuclear Waste Disposal Fund appropriations language presently stipulates that:

> Provided further, that not more that ($4,892,000) $4,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: Provided further, *That the distribution of the funding herein provided between the affected units of local government shall be determined by the USDOE and made available to the State and affected units of local government by direct payment.* (emphasis in original)

The issue of technical independence appears to have been addressed by the "direct payment" provision of the proposed language changes. Dr. John Bartlett, Director of OCRWM, and Mr. Carl Gertz, Director of the Yucca Mountain Project Office, have publicly maintained that DOE has no desire to "control" local government oversight activities and that it represents an obvious conflict of interest for them to do so. Clark County fully support the DOE position with regard to the technical independence of affected local government oversight. Direct payments will assure that DOE is not asked to determine appropriate local government oversight activities in relation to DOE Yucca Mountain repository-related activities.

Unfortunately, other aspects of this language tend to perpetuate DOE control over the amount of funding available for oversight and the distribution of such funding "between the affected units of local government."

It is questionable whether Congress intended for DOE to distribute a fixed amount among competing local governments, thereby exercising control over the substance of their oversight programs. It is not difficult to imagine how divisive such a process can become, and we are asking Congress to bear the responsibility for determining the funding requirements for all participating entities. In future years, we shall urge DOE to incorporate individual amounts for each local government in its budget request to Congress, based on the proposed activities to be carried out in that year.

As a final point, DOE proposed that funding for local governments should be derived from a fixed amount, regardless of the number of affected entities or the nature of proposed oversight activities. Clark County considers it important that some form of correspondence be maintained between the level of activity undertaken by DOE in any given year and the amounts appropriated to the state and local governments for oversight. Last year's budget activities has increased by 25 percent while oversight funds have been reduced by 20 percent.

The correspondence between DOE activities and affected governments' oversight sight should be re-established in the FY 1992 budget authorization. We suggest that oversight funding be provided as a set proportion of the authorized DOE budget for repository development activities. The amount required to carry out proposed local government oversight activities in FY 1991 would have been three percent of DOE's budget in that year. A similar proportion applied to the proposed DOE budget for FY 1992 (corrected for MRS expenditures) would be three percent of $272.8 million, or $8.18 million. This is approximately double what is proposed in the current DOE budget for local government oversight.

Sufficiency of funding is very necessary to Clark County's oversight program. We and other counties are relatively recent participants in the nuclear waste program, and we need to "catch up" with the State and DOE who have been involved for a much longer period. Clark County's concerns about repository impacts are very real. More than 90% of the workers associated with the repository will reside in Clark County with related economic impacts. Social impacts are already being experienced as local uncertainty and controversy are translated into greater political polarization. We are also increasingly aware that the prospect of a high-level nuclear waste repository threatens to stigmatize an area dependent almost exclusively on recreation, tourism and retirement decisions.

Finally, we note that the recent Ninth Circuit Court decision will result in Esmeralda and Inyo Counties, and potentially others, being granted affected status. This will increase the number of applicants for the current fixed amount of funding and would seem to indicate the need for upward rather than downward adjustment in funding allocations for local government oversight programs.

In light of the foregoing, Clark County asks that this Committee modify the proposed Nuclear Waste Fund language in a way that will ensure the technical and financial independence of affected local governments under the NWPAA mandate. The following provisional language not only addresses our concerns, it would dis-

tance DOE from any tacit or implicit approval of the activities of the affected parties. Furthermore, if funded at adequate levels, we believe the information developed by the affected parties will be of critical importance to DOE and Congress in anticipating potential impacts, particularly in view of the fact that DOE has no correspondingly detailed studies underway or contemplated at this time.

> Funding for state and local governments shall be: ____ percent of total DOE authorized expenditures for the State of Nevada, and (three) percent for the affected local governments. The distribution of the funding herein provided between the State of Nevada and affected units of local government shall be: _____ to the State of Nevada, _____ to Nye County, _____ to Esmeralda, Inyo and such other counties as shall be designated as affected local governments. Such funding shall be by direct payment and shall be available until expended.

This language assures that: (1) the affected governments are provided sufficient funding to assure the integrity of their individual programs; (2) the funds are provided in a manner that recognizes the need for independent oversight by affected governments; and (3) that inter-governmental conflict does not result as a consequence of DOE funding allocation processes. Finally, this language provides that funding shall be available until expended—a provision that allows affected local governments to manage their resources across fiscal boundaries, consistent with DOE's proposal.

Thank you for this opportunity to provide testimony. I, or program staff, would be pleased to expand on these views or to answer any questions this Committee may have.

The CHAIRMAN. Thank you very much, Ms. Dondero.

Mr. Bradhurst.

STATEMENT OF STEPHEN BRADHURST, REPOSITORY PROGRAM MANAGER, NYE COUNTY, NV

Mr. BRADHURST. Thank you, Mr. Chairman. My name is Steve Bradhurst and I am here today on behalf of the Nye County Board of Commissioners. Over the last 8 years, I have directed the Nye County Nuclear Waste Repository Program. And I essentially started from the beginning for Nye County in 1983, and as I say, continue to direct this program. I have seen a lot of changes over the last 8 years.

A way of orientation, Mr. Chairman, and members of the committee, Nye County is the situs local government. Yucca Mountain is located in south central Nye County. And the nearest communities to Yucca Mountain are the Nye County towns of Amargosa Valley and Beatty. Amargosa Valley is approximately 6 miles from the mountain. Also, Amargosa Valley extracts its water—the water that the residents use comes from the ground and Yucca Mountain is in the same water basin as Amargosa Valley residents reside.

The last time Nye County was before this committee was the spring of 1987, Mr. Chairman, to provide testimony on proposed amendments to the Nuclear Waste Policy Act of 1982. Nye County suggested a number of amendments to allow the situs local government to participate in the repository program. At that point in time, the Nuclear Waste Policy Act was silent for the most part on the participation of the affected local government.

With your help, Mr. Chairman, and the help of your staff, the 1987 Amendments Act gave Nye County special rights of participation in oversight. And we thank you for that. For example, as a result of the Amendments Act, Nye County was automatically designated an affected unit of local government, and Nye County has a right to conduct on-site—oversight activities.

Nye County feels that when the dust settles on this controversial program and a site is selected, the situs local government will be left to deal with the project on the daily basis. The situs local government will have to worry about repository impacts on its residents, on its economy, on its natural resources, and on its physical well-being. The situs local government will have to accommodate the repository work force and it will be the first responder to repository accidents.

Quite frankly, Mr. Chairman, Nye County is frightened. No matter how you cut it, if mistakes are made in the design, construction, operation, or closure of a repository at Yucca Mountain, no group of people in America will be more harmed than Nye County residents. Nye County, therefore, has steered clear of resolutions for or against the repository.

Instead, we have focused on being as pragmatic and professional as possible in addressing repository issues. For example, we have had, like everyone at this table, problems with the Department of Energy. But what we have tried to do is to sit down with the Department of Energy and through formal interactions formalize a process where we can discuss our problems and discuss the way we deal with issues that are important to Nye County and DOE. And we thank John Bartlett for his assistance in that area.

We intend—or Nye County also believes, Mr. Chairman, that the work of other local governments have added valuable additional perspective and information to this program. We intend, however, to continue to assert that we have the primary local government role and a repository program, a role that Congress assigned to us. We hope DOE will recognize our special status, particularly in light of the fact that there could be as many as 10 affected units in local government by year's end.

Regarding the nuclear waste management provisions in the administration's national energy strategy legislation, Mr. Chairman, we oppose the administration's proposal to preempt State and local permitting authority during site characterization. We believe the preemption would unnecessarily undermine public confidence in the integrity of the program. Not only would the preemption legislation set back DOE's credibility among Nevadans, it will surely complicate DOE's efforts to reach agreements with current and future host of other DOE facilities, for example, at MRS.

Public credibility is indispensable to this program, particularly in light of DOE's management with the defense facilities. The proposed preemption allows DOE to take a short cut through the backyards of State and local sovereignty without compelling evidence in our mind that the national interest has been seriously compromised.

Nye County has not adopted a single ordinance or regulation for the purpose of trying to regulate site characterization. But that does not mean that there are not permitting issues of concern to us relative to the siting, construction, operation, and closure of a repository at Yucca Mountain. For example, we are fearful about the potential loss of water rights to the repository project. While DOE tells us it expects to use little water during site characterization, we are deeply troubled about the precedent this legislation would

establish for the future when repository water needs may very well increase.

Our precious water, Mr. Chairman—our water supply is our future. This water is already under assault by those who would dewater a substantial part of central and eastern Nevada. We strongly believe that water demands by anyone, including DOE, should be subject to vigorous scrutiny. The bottom line, Mr. Chairman, is the preemption provision is a cure that is far worse than the perceived disease.

Regarding the provision to delinking the construction of an MRS from progress on a repository we support that provision. We believe delinking an MRS would reduce the danger to make Yucca Mountain work as a suitable site.

In conclusion, Mr. Chairman, the success of the DOE repository program will be measured not by whether or not a repository is constructed at Yucca Mountain but by the integrity, fairness and openness of the process by which the suitability of the site is evaluated.

Again, Mr. Chairman, thank you for the opportunity to speak today.

[The prepared statement of Mr. Bradhurst follows:]

PREPARED STATEMENT OF STEPHEN BRADHURST, REPOSITORY PROGRAM MANAGER, NYE COUNTY, NV

I. INTRODUCTION AND SUMMARY

A. Introduction

On behalf of the Nye County Board of Commissioners, I am pleased to have this opportunity to present testimony in connection with this Committee's development of comprehensive national energy legislation. For a more detailed discussion of Nye County's repository oversight program activities and our concerns, I refer the Committee to the testimony we submitted as part of your March 21, 1991 hearing.

Yucca Mountain, the candidate site for the nation's first high-level waste repository, is located within Nye County, Nevada, approximately one hundred miles northwest of Las Vegas.

Nye County has an intense interest in the Department of Energy's site characterization program for an obvious reason: if a repository is built at Yucca Mountain, the County and its residents will bear the burdens of "hosting" it forever. If mistakes are made in the design, construction, operation, or closure of a repository at Yucca Mountain, no group of people in America will be more harmed than Nye County's residents.

Almost all of us in Nye County live adjacent to proposed transportation routes, if not to Yucca Mountain itself. Six miles from Yucca Mountain is the town of Amargosa Valley, for which the only source of drinking and irrigation water is groundwater. Yucca Mountain is located upstream, hydrologically speaking, in the town's water basin. In addition, Nye County's public health and safety services would be called upon to be the first responders in the case of repository-related accidents.

Moreover, we will have to provide public services and facilities to support the work force at Yucca Mountain. As documented in DOE's "Section 175 Report to Congress," the potential socioeconomic impacts of the repository program on our rural communities could be substantial.

Our testimony today is intended to advise the Committee of Nye County's views regarding the Administration's proposal to pre-empt state and local permitting authority during site characterization, and to alert the Committee to several key issues relating to the status of the repository program and our participation in it.

B. Summary

1. As the "situs" jurisdiction within which Yucca Mountain is located, Nye County exercises a Congressionally designed oversight role in the program, independent of the State of Nevada and unique among other participating local governments. We have not taken a formal position for or against the repository program,

but we intend to continue aggressively protecting the health and safety of our citizens. We support full and fair examination of the State's technical concerns.

2. We oppose the Administration's proposal to pre-empt state and local permitting authority during site characterization. We believe it will unnecessarily undermine public confidence in the integrity of the program. Not only will it set back DOE's credibility among Nevadans, it will also complicate efforts to reach agreements with current and future "hosts" of other DOE facilities.

Such further erosion of public confidence would be an unnecessary price to pay, since DOE has failed to show exactly how the State has harmed the program. As the General Accounting Office has found, DOE was not prepared to begin site characterization until this year. Moreover, the courts have given no sign that they will be unacceptably slow in dealing with legal disputes that may arise in the future. Finally, rightly or wrongly, the courts have yet to sustain a single argument of the State's, making it increasingly difficult for Nevada to prevail in its efforts.

We support the Administration's proposal to "de-link" a monitored retrievable storage facility from the repository. We believe that progress on an MRS would help offset some of the institutional momentum that inevitably creates pressure to "make Yucca Mountain work" as a suitable site.

3. Among other concerns we have is the fact that a recent Ninth Circuit Court decision promises to increase to as many as ten the number of counties formally participating. Accordingly, more funding will be needed for local government oversight work. The reasoning used by the Court suggests that such funding should be allocated based upon the degree of risk posed to the counties, with line-item funding for Nye County as the "situs" jurisdiction. We also suggest that a "neutral" third party be responsible for making allocation decisions among local governments if a line-item approach is not adopted by Congress. We support the Administration's proposal, contained in its FY92 budget request (see attachment A), to streamline local government funding in this program by changing from the current, cumbersome grant program to a "direct-payment" system.

4. We believe that DOE should comply with the law by making its Grants-Equal-To-Taxes payments this year. We also strongly question the legality of DOE's preliminary position indicating that it, rather than existing Nevada tax laws, will determine the repository program's tax liability.

5. Nye County and DOE have entered into "formalized interactions" to develop and document key aspects of our participation in the program, such as how DOE will incorporate into its planning the sophisticated socioeconomic data-gathering system we have designed. We have recently concluded with DOE a formal "Framework for Interactions," and we anticipate additional agreements in the future. Nye County initiated this process, and we believe it demonstrates our determination to participate aggressively but constructively, as Congress intended when it wrote us into the repository program in 1987. We also believe that the development and implementation of such agreements will test DOE's commitment to a "new culture."

II. NEED FOR OBJECTIVE ASSESSMENT OF SITE SUITABILITY

If the tenor of the dispute between the Department of Energy and the State of Nevada causes the substance of the State's scientific concerns to be overlooked, it will be difficult to persuade the people of Nevada—or for that matter, the residents of other states that ultimately may be touched by this program—that their safety and welfare are being taken seriously. We therefore strongly support a thorough review of the technical concerns raised by the State.

In adopting the Amendments Act, Congress sought to "re-direct" the waste program. By naming Yucca Mountain as the site to be characterized while halting work at other sites, Congress hoped to expedite the repository program and to reduce its cost. In doing so, however, it created the risk that should the Nevada site prove technically unsound, there will be no alternative "back-up" sites immediately available. We believe that the inevitable result of such a strategy will be to put pressure on the Department of Energy and the Nuclear Regulatory Commission not to disqualify the Yucca Mountain site.

DOE repeatedly has stated that one of its goals during the site characterization process is to identify whether there are any "showstoppers" at Yucca Mountain—geotechnical problems so severe as to cause the immediate disqualification of the site.

To some extent, such statements are misleading. Few scientists actually expect that problems of such magnitude will actually appear during characterization. On the other hand, the absence of "showstopper" problems would not necessarily mean that the site is truly suitable for isolating waste for ten thousand years.

Geologically speaking, Yucca Mountain is extremely complex. The scale of the project is unprecedented and, to say the least, technologically challenging. Accordingly, a determination of site suitability is likely to be difficult to prove in any event. Many judgments will have to be made based on sophisticated probability calculations and on current expert judgment.

In the absence of any obvious "showstoppers" then, the nation runs the risk that institutional momentum, and perhaps political pressure as well, may favor putting deadlines and cost concerns ahead of safety and public credibility. Therefore, it is easy to see why many citizens of Nevada are reluctant to allow site characterization to begin.

To counteract the institutional momentum against halting repository work at Yucca Mountain, it is essential that the Nuclear Regulatory Commission, the Environmental Protection Agency, and the Nuclear Waste Technical Review Board (NWTRB) continue to play a major, independent role in the repository program. They must be given the resources to do the job, and they must be insulated from political pressures.

Equally important, they must conduct their repository activities openly and with an unprecedented sensitivity to the public's concerns. The national interest will be set back, not served, if the need to find a "solution" to the waste disposal problem becomes an excuse for steamrolling legitimate health and safety concerns. Doing so will only reinforce the repository program's reputation in Nevada: that it is politically manipulated, publicly discredited, and scientifically insupportable.

III. NYE COUNTY'S OVERSIGHT RESPONSIBILITIES AND PROGRAM

If the repository is built, and the dust settles on this controversial program, we think we will be the ones left to deal with the project on a daily basis.

For this reason, Nye County has not taken a position "for" or "against" the repository program. We cannot afford to dismiss the possibility that characterization will proceed and that a repository will be built at Yucca Mountain. Nor can we take at face value assurances that others will look after our health and safety and will protect our socioeconomic and environmental well-being. We understand and support the nation's need for permanent disposal of the waste accumulating around the country, but we are determined to defend our citizens' interests.

As early as 1983, and particularly since the selection of Yucca Mountain in 1986 as a repository candidate site, Nye County has focused its efforts on ensuring that for as long as repository-related activities continue in connection with the Yucca Mountain site, Nye County's residents will be protected.

Our staff regularly monitors meetings in Nevada, Washington, and elsewhere, involving the many parties to the high-level waste management program. In addition to the range of DOE activities, the County has observed or participated in meetings, briefings, and hearings that have included the Nuclear Waste Technical Review Board (NWTRB), the NRC, the State of Nevada, the National Academy of Sciences, the U.S. Geological Survey, the national labs, and DOE support contractors.

Since the passage of the Amendments Act in 1987, we have expanded our participation to adjust to DOE schedule and priority changes, changes in the State's activities, and increased NRC and NWTRB interactions with DOE. We also have been reviewing the plans, progress reports, technical papers, and other documents regularly generated by the array of program participants. We have provided comments on several specific program areas and issues, including OCRWM program management, re-directed site characterization studies, transportation studies, and socioeconomic monitoring, assessment, and mitigation planning.

We are developing a sophisticated oversight and participation program to keep our residents informed and to ensure to the best of our ability that the repository program is carried out according to the highest standards of public accountability and technical excellence.

Our specific objectives are to see that:

1. Adverse impacts of repository related activities are minimized;
2. Unavoidable impacts are mitigated;
3. Public health and safety are fully protected;
4. Nye County's valued natural resources are not degraded;
5. To the extent possible, repository activities are designed and implemented in such a way as to enhance opportunities for economic development; and
6. Nye County residents are kept fully informed of repository program developments.

Even with the substantial role Nye County anticipates playing, however, the history of the high-level waste program has demonstrated that achieving these objec-

tives will be challenging. During Congressional consideration of the Nuclear Waste Policy Amendments Act of 1987, the Department of Energy was widely criticized for manipulating the repository program for political ends, for exercising inadequate oversight of its contractors, and for failing to conform to the highest standards of technical soundness and institutional fairness in implementing the program.

More recently, disclosures about the management problems at DOE defense facilities around the country have reinforced public concern about the high-level waste program.

Led by the National Academy of Sciences, questions also have been raised regarding the feasibility of meeting current regulatory standards. These questions have generated fears that suitability requirements will be adapted to the Yucca Mountain conditions, i.e., as noted previously, that institutional momentum, and the lack of an alternative site, will dictate that deficiencies at the Yucca Mountain site be "engineered around."

IV. THE ADMINISTRATION PROPOSALS: FEDERAL PRE-EMPTION AND MRS

A. Pre-emption of State and Local Permitting Authority

As noted above, the Nye County Board of County Commissioners has not adopted a resolution favoring or opposing the repository program.

We have been developing our repository oversight program to match the needs of our citizens, not to "me-too" the State of Nevada's opposition. Indeed, if this Committee draws only one conclusion from our testimony today, it should be that Nye County's role in this program—statutorily and in practice—is separate from the State of Nevada's. We intend to continue pursuing an independent role, as provided in the Amendments Act.

Nevertheless, the principal subject of today's hearing—the Administration's proposal to pre-empt state and local authority with respect to permits affecting site characterization activities—brings all of us in Nevada together in opposition.

As members of this Committee will recall, when Congress fashioned the Nuclear Waste Policy Amendments Act of 1987, there was bipartisan agreement that the program had been poorly managed and politically influenced. You recognized that for the program to succeed, public confidence had to be re-built. For example, the Technical Review Board was created to provide blue-ribbon oversight of DOE's activities. The NRC and EPA would be called upon to provide guidance to DOE on key technical issues regarding the protection of public health and safety. The State of Nevada and affected units of local government would be entitled to funding for the conduct of our own, independent oversight of the program.

It was true then and it is true now: public credibility is indispensable to this program. Yet the administration's proposal would trample on the legitimate legal prerogatives of the State of Nevada and its local governments, adding further to the perception that when DOE meets resistance, or when it makes a mistake, it will simply hoist the flag of federal preemption and national interest.

The legislation would be more defensible, perhaps, if the State of Nevada's legal challenges to the program had caused years of delay and major setbacks to site characterization. As the General Accounting Office recently has found, however, that is not the case. According to GAO, the months that have been added to the repository program schedule were necessary to bring such important program components as quality assurance procedures and Exploratory Shaft Facility design up to par. In short, even if the State of Nevada had not delayed action on permits, DOE still would not have been prepared until now to conduct site characterization.

We believe that Secretary Watkins deserves credit for restructuring the program last year to put safety ahead of deadlines. Like the GAO, he concluded that the program would be better off in the long run, in terms of both technical defensibility and public credibility, if DOE were not forced to begin site characterization prematurely.

We would also observe that thus far the courts have found no reason to block, even temporarily, DOE's work. Therefore, it is difficult for us to accept the argument that for the sake of the national interest the federal government's hand needs to be strengthened further at this time.

There is simply no convincing evidence that the State's resistance shows any signs of seriously "frustrating the national will." In 1987, just a few short years ago, the Department of Energy won the right to keep control over the program and to focus its efforts on just one, Congressionally selected site. Relieved of the burden of having to make its case for one site over two others, the Administration now calls for further "short-cutting"—this time, through the backyards of state and local sov-

ereignty—without compelling evidence that we have in the past, or will in the future, seriously compromise the national interest.

Nye County has not adopted a single new ordinance for the purpose of trying to regulate site characterization. But that does not mean there are no permitting issues of concern to us now or that may arise in the future. For example, we are fearful about the potential loss of water rights to the repository project. While DOE has told us that it expects to use little water during site characterization, we are deeply troubled about the precedent this legislation would establish for the future, when repository water needs may well increase.

Our precious water supplies—our economic lifeblood—are already under assault by those in Las Vegas who want to pipe it south to fill casino fountains and swimming pools (see attachment B). We strongly believe that water demands by anyone, including DOE, should be subject to vigorous scrutiny.

Mr. Chairman, we are well aware of the need to develop a comprehensive national energy policy. Too many of Nye County's sons and daughters risked their lives in the Persian Gulf for us not to appreciate the need to reinvigorate the nuclear option. Nuclear energy must be a part of a "mix" of energy technologies designed to reduce our dependence on imported oil. We applaud this Committee's effort to enact a broad national policy quickly.

We are equally convinced, however, that this legislation is a cure that will be far worse than the supposed disease. If enacted, the public confidence in the fairness and technical impartiality of the repository program that OCRWM Director John Bartlett has tried to rebuild will surely suffer among Nevadans.

But it will also suffer among others around the country who, like the residents of Nye County, are, or may become, the hosts of major DOE facilities. If enacted, what effect would this legislation have on those who are contemplating discussions with the Nuclear Waste Negotiator about hosting an MRS facility? What confidence would they have that their legal rights—including any additional authorities Congress might grant to them as part of a negotiated agreement—would be safe from attack at a later date?

Similarly, what would enactment of this legislation do to public confidence of all the states that have negotiated hazardous waste cleanup agreements with DOE?

Congress and the nuclear industry must recognize that even without opposition from the State of Nevada, there undoubtedly will continue to be delays in the repository program. As DOE itself has so often said, no one knows for sure what will be found in the depths of Yucca Mountain, and what design changes and regulatory requirements—many of which are still on the drawing board—will have to be accommodated in the coming years.

We believe that it would be unfair and counterproductive to try to make up for the inevitable loss of time these challenges will entail by curtailing the exercise of legitimate state and local authorities—especially when so little of the delay to date can be attributed to the State of Nevada or its local governments.

B. "De-linking" Monitored Retrievable Storage

The Administration also has proposed amending the Act to "de-link" the construction of a monitored retrievable storage (MRS) facility from progress on a repository. We support this proposal, because we believe that "de-linking" an MRS could reduce the danger of institutional momentum driving the repository program at Yucca Mountain. On the other hand, DOE would still face the tasks of siting an MRS, justifying it economically, and planning transportation to it.

V. NYE COUNTY'S UNIQUE STANDING AS THE "SITUS" LOCAL JURISDICTION

To restore public credibility to the federal government's handling of nuclear waste issues the repository program must be open to public scrutiny and participation. In addition, professional oversight, through state and local governments, is needed to ensure that the concerns and needs of the citizens whose communities must bear the burden of the program are not ignored.

This critical principle was acknowledged by Congress when, in the Nuclear Waste Policy Amendments Act of 1987, it created a role for Nye County and other "affected units of local government," to supplement the work of the State of Nevada. As the members of this Committee may recall, Nye county, as the "situs" jurisdiction for the proposed repository, was the only local government designated an "affected unit of local government" in the Nuclear Waste Policy Amendments Act of 1987.

Two other Nevada counties, Lincoln and Clark, subsequently received the "affected" designation—not from Congress, but from the Secretary of Energy. As authorized by the Amendments Act, the Secretary granted the designation in the months following enactment, in response to petitions submitted by those counties' boards of

commissioners. He rejected similar applications from Esmeralda and White Pine Counties in Nevada, from Inyo County in California, and from the Western Shoshone tribe located in Nevada.

The Congress granted the Secretary the authority to designate these additional "affected local governments" partly in recognition of the fact that they, too, could be affected by repository-related activities and partly because of a dispute within Nevada over "Bullfrog County."

As you may recall, Bullfrog County was an artificial jurisdiction created by the Nevada Legislature in an attempt to divert from Nye County federal monies that the Legislature believed would be forthcoming as a result of certain provisions of the Nuclear Waste Policy Act of 1982. Bullfrog County, which had no residents, consisted of Yucca Mountain and its immediate vicinity. Nye County, without help or support from anyone, succeeded in overturning the legislation in court. Many of those who had supported the Bullfrog County law later admitted that the whole episode was both an embarrassment to Nevada and a misinterpreted signal to Congress that the State wanted a repository.

With Bullfrog County a reality at the time of the 1987 Congressional deliberations on the Amendments Act, Congress wanted to be sure that funding for oversight of DOE activities during site characterization would go to Nye County—the repository "situs" jurisdiction—not to a phantom county created to funnel repository funds elsewhere in Nevada. By permitting the Secretary to name additional counties as "affected," Congress was ensuring that Nye County, which surrounded Bullfrog County at the time, could still receive the intended oversight funds even if Bullfrog County somehow survived a court challenge.

Congress recognized that Nye County's role, as the "situs jurisdiction," would be different from that of any other local governments that might subsequently be entitled to participate in the program through the Secretary's discretionary designation of them as "affected." This Congressionally designed primary role for Nye County was reinforced elsewhere in the Amendments Act: Nye County is the only local jurisdiction authorized to appoint an "on-site representative." Broadly defined, this function entitles Nye County to "conduct on-site oversight activities."

Nye County was also singled out by Congress to receive grants-equal-to-taxes (GETT) for repository-related activities and facilities that would otherwise be taxable by us if the Yucca Mountain project were a private, rather than a government, activity.

In recognition of the unique role assigned to Nye County by Congress, the Nuclear Regulatory Commission has designated a place for Nye County on the Licensing Support System Advisory Review Panel. That committee is working with the NRC and DOE staffs to design the electronic system through which parties to any future repository licensing proceeding will obtain access to the enormous volume of documents, already accumulating, that would support a repository license application.

This history is important for all parties involved with the repository program to understand because it is the basis for Nye County's claim that, among local governments, we are, in effect, first among equals in the "affected-party" oversight of DOE activities.

This special role reflects the fact that as long as Yucca Mountain remains the focus of the repository program, and regardless of the waste transportation routes that may be selected, Nye County will bear a greater burden and greater risk from the repository program than any other community in America.

Nye County's standing has become more important now that additional counties adjacent to Nye are likely to be designated "affected" by the Secretary, and claim funds to participate in the program. Our neighboring counties, Esmeralda and Inyo, whose petitions for "affected" status were rejected by the Secretary, have successfully challenged his decisions in court. The Counties claimed that they have at least as much basis for being designated as Clark and Lincoln counties.

Nye County believes that the work of other affected local governments has added valuable additional perspectives and information to the repository program. We intend, however, to continue asserting the primary role in the program that Congress assigned to us. We must be able to carry out our responsibilities to protect our economy, our valued natural resources, and the health and safety of our citizens, without being encumbered by competing claims from other affected local governments, however justified they may be on their merits.

VI. ADDITIONAL CONCERNS: OVERSIGHT FUNDS AND GRANTS-EQUAL-TO-TAXES

A. Overview

Since passage of the Amendments Act, DOE has been unable, for a variety of reasons, to initiate on-site studies. This has led to the popular misconception that the program has been inactive.

In fact, as noted above, DOE has been spending millions of dollars on design, engineering, quality assurance, geotechnical studies, and performance assessment. There are a number of activities underway in this program, notwithstanding the delays in site characterization, that will shape the future licensing process.

Accordingly, Nye County must be provided with the resources to participate effectively in this program now, regardless of the outcome of DOE's current efforts to gain access soon to Yucca Mountain. If site characterization gets underway in the coming months, the scope of our oversight work will grow accordingly. If it does not, however, there will still be a great deal of work in progress that will require our attention.

B. Oversight Funding

Nye County has been gradually and conservatively building a sophisticated oversight program. Through that program we have identified a number of specific concerns, discussed at greater length in our testimony submitted to this Committee for its April 21, 1991 hearing.

Of particular importance at this time is the discussion of funding concerns, given the recent decision of the Ninth Circuit Court that is likely to boost the number of "affected units of local government" competing for oversight funds. To deal with this development, we are proposing a new approach to funding local government activity that recognizes Nye County's unique role as the "situs" jurisdiction. We also offer our support for the Administration's recent proposal to change the funding process itself.

1. Funding: Court Decision On "Affected" Status. As noted earlier, Nye County's participation in the program as an "affected unit of local government" was provided for in the Amendments Act because of our status as the Yucca Mountain "situs jurisdiction." Clark and Lincoln Counties in Nevada received the "affected" designation from the Secretary shortly after enactment of that Act.

On February 20, 1991, the Ninth Circuit Court of Appeals vacated DOE's rejection of the requests of Esmeralda County (NV) and Inyo County (CA) for "affected local government" status in the repository program. The Court expressed the view that even the slightest potential threats to the Counties' health and environment from repository operations and waste transportation should make them eligible for "affected" status.

In its decision, the Court noted that the Congress provided no criteria for the Secretary to use in determining whether to grant "affected" status to additional local governments. We believe that the likely proliferation of affected local governments resulting from this case calls for some guidance from Congress to DOE as to how financial assistance for oversight work should be allocated among them.

2. Funding: Local Governments and the Court's Decision. This decision presents the real possibility that as many as six additional counties adjacent to Nye County soon will receive the designation as well.

Congress designed the "affected local government" status to ensure that any local government likely to experience impacts from the repository program would be able to participate in it. It could thereby verify that the program was being run in an open, honest, and technically competent fashion.

As the Court noted, what Congress did not do was to provide criteria—other than that a county be "adjacent" to the situs (Nye) County—for the Secretary to use in making discretionary designations of additional local governments.

In its decision, the Court seemed to suggest that in deciding whether to grant "affected" status, the greatest weight should be given to those counties adjacent to Nye County that may someday find themselves threatened by impacts the Court regarded as being serious and irreversible, such as: radioactive contamination of groundwater or property; or transportation accidents that could release radiation into the environment.

The Court put less weight on the need to grant "affected" status to local governments confronting potential impacts less dangerous to public health and safety, such as socioeconomic impacts. It found that if at some point in the future such impacts were to appear more likely to occur, the Secretary could then reverse his earlier refusal to grant "affected" status, without endangering public health and safety.

In the wake of the Court's decision, DOE is examining the criteria it will use in making determinations about what circumstances call for designating a local government "affected" for purposes of its participation in the repository program. We believe, however, that it would be helpful for Congress to provide guidance to DOE on this issue.

3. Funding: Nye County's Response to The Court's Decision. Even without the Court's decision, the funds earmarked by Congress in recent years for local government oversight have been subject to increasing competition from the three existing affected units of local government. This has occurred as Nye, Clark, and Lincoln Counties' programs have grown. Nevertheless, Nye County has been conservative in building our capacity by "tracking" DOE's own progress. For example, we have not taken advantage of our prerogative under the law to establish on-site representation.

As the prospect of site characterization increases with each new court ruling against the State of Nevada, however, we will need to carry out this on-site representation and other oversight activities across a broader range of DOE activities. In short, if site characterization moves out of the laboratory and onto Yucca Mountain, Nye County's need for oversight funds will grow more critical.

We also understand and support the efforts of other local governments to protect their interests in the repository program. At the same time, however, the potential proliferation of as many as ten affected units of local government could well mean that insufficient funds will be available for Nye County—the situs jurisdiction—to participate in the program and to conduct the oversight work that Congress intended us to do.

To ensure that the needed funding will be available for Nye County, we recommend that a specific appropriation be made annually for Nye County, as the situs jurisdiction.

Precedence for this recommendation has been established by the NRC in its formulation of the Licensing Support System Advisory Review Panel, discussed earlier. In appointing members of the Panel, two "seats" were designated for affected units of local government: one for Nye County as the situs jurisdiction; the second for all other affected local governments.

As noted above, Congress in the Amendments Act also designed a role for the situs jurisdiction separate from that of other affected local governments, by: (a) designating us "affected;" (b) authorizing us alone to appoint an "On-Site Representative;" and (c) authorizing us to receive Grants-Equal-To-Taxes.

These facts, coupled with the Court's interpretation of Congressional intent, warrant a unique status for Nye County in the appropriation process. A line-item appropriation would also be consistent with the practice of directing Waste Fund monies to specific agencies exercising independent oversight of the repository program.

4. Funding: Additional Amounts Needed. Beyond Nye County's needs, Congress and DOE must make more funds available for the other local governments' oversight programs, reflecting the important repository design work underway, the increased likelihood of site characterization getting underway, and the growing number of local government grantees resulting from the Ninth Circuit Court's decision. Those local governments demonstrating a willingness to participate constructively in the program in order to protect the interests of their citizens must not have their legitimate funding needs held hostage to the continuing test of wills between the federal government and the State of Nevada.

As noted earlier, this program has not been halted. Important decisions are being made. The Supreme Court's recent ruling against Nevada makes the possibility of site characterization going forward a greater likelihood. Without sufficient funds to carry out our oversight responsibilities, Congress' promise to the people of Nevada that they will not have to accept on faith whatever DOE tells them about the quality of their work and of the site, will ring hollow.

5. Funding: DOE's Allocation Procedures. More money alone will not solve a related problem, however: the question of how monies should be allocated among the growing number of affected parties.

We believe that the increasing competition for scarce oversight funds calls for a new approach to allocating those funds among the local governments adjacent to Nye County. Just as the Ninth Circuit decision will require DOE to develop some rational criteria for designating "affected units of local government," so too will DOE need some rational criteria—provided by Congress if necessary—to use in making its funding decisions. Such criteria should be based on determinations about which local governments are most likely to be affected significantly by this program, and, among those, which are likely to be more affected than others.

An additional problem raised by the current funding process is that it promotes a serious conflict of interest between DOE's role as the arbiter of competing applications for shrinking grant funds and its role as the agency whose activities are being overseen by the local government grantees.

DOE's inclusion of contractor personnel in the grant application review process has exacerbated this problem. In Nye County's case, our grant request has been scrutinized by contractor personnel whose repository program activities were to be the subject of some of our proposed oversight work. It is inconceivable to us that Congress intended to have contractors influencing DOE's funding of local government efforts to review those same contractors' performance.

6. Funding: A Role For A Third Party. To address these conflicts of interest, and to introduce greater efficiency and consistency in the local government funding process, we recommend that the job of making allocations of repository program grant funds among "affected" local governments adjacent to Nye County be turned over to an independent third party, such as the Department of Defense's Office of Economic Adjustment.

Such an approach would not alter DOE's role as manager of the repository program. Indeed, as noted above, we would expect that allocation decisions made by a third parties would be based upon DOE-defined criteria. This third-party approach would eliminate the conflict of interest inherent in DOE's current roles while simultaneously assuring affected parties that political pressures were not driving allocation decisions. A third party obviously would not have the conflict-of-interest problems of those who are today both running the repository program and making repository oversight grant decisions.

7. Funding: The Administration's Proposal. In its FY92 budget request to Congress, the Administration proposed changing the repository program financial assistance process from a grant to a "direct payment" (see attachment A). In the budget document, the Administration explained that such a change would make the administration of financial assistance more efficient. Under the proposal, we would be required to certify (at the end of the fiscal year), that payments received were spent in accordance with the Nuclear Waste Policy Act.

We strongly support the Administration's proposal, and we recommend that it be adopted by Congress.

We also agree with the Administration's view that such an approach would reduce inefficiencies in what is now a lengthy grant application review process. Last fall, DOE informed us that our FY91 oversight grant funding could not begin until January of 1991 and would run through December of 1991. Apparently DOE was unprepared to make timely grant decisions. Such problems, as well as the conflict-of-interest issues discussed above, demonstrate the need for the Administration's proposed change.

C. Grants-Equal-To-Taxes

Since Congress passed the Nuclear Waste Policy Act in 1982, DOE has not made a single grant payment on its Grants-Equal-To-Taxes (GETT) obligation under that Act. After years of debate with affected parties, DOE last year issued a draft Notice of Interpretation regarding the GETT provision. In the Notice, DOE proposed a narrowly drawn definition of property and activities that it considers "taxable." Nye County, and virtually all other affected parties, have strongly disagreed with DOE's interpretation of Congressional intent on this issue.

Moreover, the Notice reflected DOE's intention to calculate the amount of its GETT payments using a formula the Department itself would design. Yet the Act clearly calls for following state and local tax formulas and assessment procedures, as if the repository project were being carried out by a private party. We believe that DOE is required by the Act to make GETT payments according to Nevada tax law. If DOE disagrees with our assessment methodology, it should follow Nevada's existing procedures for contesting the assessment.

Nye County is a rural government serving a population of less than twenty thousand people. Its land area is approximately eighteen thousand square miles, which is equivalent in size to New Jersey, Massachusetts, Delaware, and Rhode Island, combined. Less than ten percent of our land is privately held; the rest is federally withdrawn to serve national needs. Literally thousands of federal or federally contracted DOE, Air Force, and other agency employees work in Nye County, but they often live elsewhere.

The County, therefore, provides municipal services to a resident population spread out over many miles and also maintains a public safety and public works capacity to serve a commuter population that contributes no financial support to the County.

The result for the County is severe fiscal pressures to meet service delivery requirements with relatively few sources of revenue upon which to draw.

We have found that GETT is often viewed as being synonymous with impact mitigation assistance, provided for under Section 116(c)(2)(A) of the Act. In fact, the two are quite different. Regarding GETT, Congress envisaged the Department of Energy as a "good corporate citizen," contributing its share to the routine operation of County services. In the case of impact mitigation assistance, on the other hand, Congress sought to ensure that acute service demands that overwhelm the County's existing operations and facilities could be quickly and comprehensively addressed. Impact assistance, for example, will likely be necessary if repository-induced population growth with the County requires capital outlays for expanded water treatment facilities.

We are convinced that Congress intended the repository program to be distinctly different from other federal enterprises in that it would pay its own way relative to meeting a municipal and state tax obligation (in the form of GETT) or would, through mitigation assistance, address significant costs attributable to impacts incurred by the County in connection with the repository program.

DOE's nearly decade-old effort to restrict and control its liability, therefore, runs contrary to what we understand to be Congress' intent, and it raises additional doubts concerning DOE's view of its role vis-a-vis ensuring that the County is kept whole should the repository program continue to move forward.

We are expecting additional action on this issue from DOE sometime later this year.

VII. NYE COUNTY/DOE FORMALIZED INTERACTIONS

While the Congress provided an unprecedented opportunity for Nye County as the "host community" to participate in the repository program, it did not define DOE's responsibility to consider the results of our participation. The Amendments Act is clear about our right to participate, but not about how DOE should integrate into the repository program the product of millions of dollars we will be spending over the years to conduct our oversight of the program.

Accordingly, in December of 1989, we proposed to the Department of Energy a unique approach involving "formalized interactions" and documentation of principles and procedures governing our participation in various aspects of the program. These initiatives are intended to establish mutual rights and obligations, without in any way compromising the regulatory standards DOE must meet in this program. They will also put to the test DOE's commitment to a "new culture."

A "Framework for Interactions" between Nye County and DOE, which we developed during a series of these formalized interactions, has been officially approved. We anticipate that this "Framework" document ultimately will lead to the adoption of protocols addressing, among other possible issues: (1) principles and procedures for interaction; (2) socioeconomic monitoring and assessment, (3) DOE procurement in Nye County, (4) on-site representation, and (5) impact mitigation procedures.

We have undertaken the initiatives cognizant of the risk that they could be misconstrued as somehow promoting a repository in Nevada. Nevertheless, we believe that formalizing interactions with DOE is perhaps the best way for the County to be heard, and responded to, on the complex issues we must confront as the situs jurisdiction.

VIII. CONCLUSION

Admiral Watkins has assured the Congress that once DOE has proven its commitment to a "new culture" of openness and sound science, confidence will be restored in DOE's management of the nation's high-level radioactive waste. He has assured the citizens of Nevada that repository program schedules will not depend on politically established deadlines, and that even if they never actually welcome the repository program, our citizens will at least have the assurance that it is proceeding openly and safely.

To be sure, these are laudable sentiments. Given DOE's problems in the past, however, Congress gave Nye County specific rights of participation so that we could satisfy for ourselves that the program is responsive to the needs and concerns of the people who will have to live with this project for many years to come. We take our obligations under the program seriously, and we intend to continue working constructively with DOE—even when we disagree.

Dr. Bartlett's remarks to DOE's International High-Level Radioactive Waste Conference in April of last year suggested a commitment to fulfilling Admiral Watkins' assurances. He stated that one of his four major goals as the new Director of the

Office of Civilian Radioactive Waste Management is "to secure effective working relationships with external parties who have a stake in the pursuit and success of the OCRWM mission . . ." and that those parties "must have the opportunity for participation in pre-decisional activities."

While our contacts with Dr. Bartlett have been encouraging, we will continue to remind both DOE and the Congress that, for us, the "success of the OCRWM mission" will be measured not by whether or not a repository is constructed at Yucca Mountain, but by the integrity, fairness, and openness of the process by which the suitability of the site is evaluated. Pre-emption of state and local authorities during site characterization fails that test.

DEPARTMENT OF ENERGY
FY 1992 CONGRESSIONAL BUDGET REQUEST

PROPOSED APPROPRIATION LANGUAGE

Nuclear Waste Disposal Fund

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, [$242,833,000] $305,071,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: Provided, That of the amount herein appropriated, within available funds, not to exceed [$4,146,000] $3,000,000 may be provided to the State of Nevada, for the conduct of its oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, [$622,000 is to be available for the University of Nevada, Reno for infrastructure studies related to nuclear waste, and $207,000 is to be available to the University of Nevada, Las Vegas, to carry out transportation studies related to nuclear waste] of which $100,000 shall be available for the State Legislature's oversight activities: Provided further, That not more than [$4,892,000] $4,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: Provided further, That the distribution of the funding herein provided between the affected units of local government shall be determined by the Department of Energy (DOE) and made available to the State and affected units of local government by direct payment: Provided further, That within 90 days of the completion of each Federal fiscal year, each entity shall provide certification to the DOE, that all funds expended from such direct payment monies have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: Provided further, That none of the funds herein appropriated may be used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in 18 U.S.C. 1913: Provided further, That none of the funds herein appropriated may be used for litigation expenses: Provided further, That of the amount appropriated herein, up to [$4,146,000] $3,000,000 shall be available for infrastructure studies and other research and development work to be carried out by the University of Nevada, Las Vegas (UNLV) and the University of Nevada, Reno. Funding to the universities will be administered by the DOE through a cooperative agreement.

In paying the amounts determined to be appropriated as a result of the decision in Consolidated Edison Company of New York v. Department of Energy 870 F.2d 694 (D.C. Cir. 1989), the Department of Energy shall pay interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund. Such payments may be made by credits to future utility payments into the fund.

60

ATTACHMENT A

EXPLANATION OF CHANGE

A change in the appropriation language from grant authority to direct payment would aid in improving the contentious relationship that currently exists between the State of Nevada and the Department of Energy. It would also serve to reduce the administrative burden on both the Department and the recipients (i.e., State and affected local governments) of the grants. Modification of the appropriation language is favored by both the Department and the recipients of the grants.

Nevada farmer Higbee surveys a threatened irrigation pond

On the famous Strip, the Mirage gushes 135 gal. every minute

Till the Well Runs Dry

Hooked on growth and the splash of fountains, Las Vegas plots a water grab from rural Nevada and neighboring states

By JEANNE MC DOWELL LAS VEGAS

In Las Vegas the only sound that rivals the clink of coins is the rush of water. At the Mirage, a flashy hotel complex on the Strip, a cascading 39-ft.-high waterfall gushes 135 gal. per min. Fountains adorn the entranceways to banks, hotels and condominiums. Development communities market "waterfront living" on artificial lakes that sit like giant puddles in the middle of the Mojave. Even the names—Montego Bay, Shoreline Estates, The Lakes—reinforce the illusion that water flows abundantly in this desert oasis.

That image has fueled growth and filled the coffers of the world's most famous gambling mecca. But to people living in the surrounding rural counties, it is a symbol of the wastefulness and city-slicker hubris that have pitted them against Las Vegas in a bitter fight over the most precious resource in the West. Faced with a drought and a water shortage that threaten future growth, Clark County, which includes Las Vegas, has applied for rights to all the unallocated underground water within its boundaries and surrounding Nye, White Pine and Lincoln counties. It is one of the biggest attempted water grabs in Western history. If it succeeds, rural residents fear that Las Vegas' fortunes will grow while theirs dwindle. "If they control the water, no growth could happen without their approval," says Steve Bradhurst, a consultant hired by Nye County to organize the opposition. "They could seal our fate."

Officials at the Las Vegas Valley Water District insist that they had no alternative in 1989, when they filed 146 applications for water rights with the state engineer. Nevada's share of federally allotted water from the Colorado River cannot sustain growth in the booming oasis, which attracts 5,000 newcomers a month. Thirsty California, they argue, was positioned to jump in and stake a claim to the unused water. "It was our only Nevada source," says Pat Mulroy, general manager of the water district.

Opposing the huge project is an unlikely alliance of ranchers and farmers, rural politicians, environmentalists, Native Americans and federal agencies. More than 3,600 protests have been filed with the state engineer, who begins hearings in a few months. No one knows exactly what the long-term impact of pumping so much water—Las Vegas has requested 200,000 acre-ft. per year (an acre-ft. is 326,000 gal., or enough to cover 1 acre with 1 ft. of water)—will be on the complex hydrologic system of the area. Environmentalists say excessive pumping will dry up springs and wetlands, threatening numerous endangered species, plants and wildlife from southeastern California to Utah. The Federal Government plans to deny Las Vegas permits to drill or transport water across its land until an environmental-impact statement is prepared.

Even with the government's support, it will be a tough fight. Las Vegas is the seat of political and economic power in Nevada. Sixty-five percent of the state's 1.3 million people reside in Clark County. Development, gambling and tourism industries, which generate two-thirds of the state's income, want the extra water. "If we develop the water, and spend the money, shouldn't we have the control?" asks Clark County commissioner Paul Christensen.

Such sentiments echo an enduring struggle over growth between rural and urban communities throughout the West. Rural towns, which have watched political power shift steadily away from them—Las Vegas controls 36 of the state legislature's 63 seats—feel beleaguered and bypassed by urbanization. Taking water that flows under their land seems the final straw.

In divvying up water, Western experts say, noneconomic contributions must be taken into consideration. "How do you place a value on that student-body president from a small high school who becomes a U.S. Senator?" asks University of New Mexico law professor Charles DuMars. "How do you include that into some reasonable process? If it's raw power without process, people will die for that resource."

In Nevada the absence of such a process has sparked deep resentment among farmers and ranchers. "It's a whole way of life, a piece of history," explains Joe Higbee, who runs a 100-acre ranch in Alamo along with his son Vaughn.

One of the biggest complaints of rural residents is that Las Vegas has not done enough to save the water it has. Per-capita water consumption in the metropolitan area has consistently been among the highest of Western cities: 366 gal. daily compared with 200 gal. in Los Angeles. Recent restrictions have reduced Vegas' consumption to 343 gal.

While efforts at conservation have started to pay off, it is still practically a foreign concept in this city of green golf courses and lush lawns. Even if Clark County gets the water from its rural neighbors, it must seriously begin to plan for growth and the water shortages that are likely to worsen throughout the West in coming decades. If it doesn't, Las Vegas may be gambling its future away. ■

The CHAIRMAN. Thank you very much, Mr. Bradhurst.
Dr. Draper.

STATEMENT OF DR. E. LINN DRAPER, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, GULF STATES UTILITIES COMPANIES

Dr. DRAPER. Thank you, Mr. Chairman, I am Linn Draper, President and Chief Executive Officer of Gulf State Utilities Companies. We provide electric and gas service to more than 500,000 customers in Texas and Louisiana.

I also serve as a member of the American Committee on Radwaste Disposal or ACORD, which is the senior utility industry body on nuclear waste and transportation issues.

My testimony today is presented on behalf of ACORD, the American Nuclear Energy Council, the Edison Electric Institute, and the Utility Nuclear Waste and Transportation Program.

I appreciate the opportunity to present our views on the nuclear waste management initiatives included in the administration's national energy strategy. This is a vital initiative addressing one of the institutional issues that inhibit nuclear energy from contributing its full potential to our Nation's growing energy requirements.

I have submitted a formal statement to your staff, Mr. Chairman, and ask that it be made a part of the record. And with your permission, I will summarize that testimony.

Many of the national energy strategy proposals currently before the Congress rely on a combination of energy efficiency and domestic production initiatives, including the expanded use of nuclear energy. Any balance, comprehensive, national energy strategy must include nuclear energy as one means of providing the Nation's growing electrical requirements, provide for energy security, and promote environmental progress.

We applaud the efforts of the leadership of both this committee and the administration in helping to shape such a national energy strategy.

Included as part of the administration's National Energy Strategy Act is an initiative related to Yucca Mountain. In 1987 Congress amended the 1982 Nuclear Waste Policy Act and directed DOE to study Yucca Mountain as the first location for a potential site for the Nation's spent fuel, high-level waste repository.

Unfortunately, political, rather than regulatory limitations or technical concerns, have prevented Yucca Mountain from proceeding. Because resolution of the impasse of Yucca Mountain must be one of the Nation's foremost priorities, my statement today has only primary goal, to encourage this committee and all Congress to act now to resolve this impasse.

Mr. Chairman, the failure to finally resolve the high-level waste issue has created a related problem relative to the temporary storage of nuclear waste. Several utilities have had to begin preparing for the possibility that they will run out of storage capacity before either a monitored retrieval storage facility or the repository will begin accepting the Nation's high-level waste.

This means that not only will these utilities, through their rate payers, continue to finance the vast majority of the cost of a reposi-

tory and an MRS facility at a combined cost of more than $500 million annually, but at the same time those utilities must also pay millions of dollars for additional on-site storage.

The delays in the DOE high-level radioactive waste program, the cost of the DOE program, and the cost of additional on-site storage has created concerns among State public utility commissions and the utility industry. Given the current impasse, industry leadership and PUCs may be forced to contemplate how much longer this Federal program, which is not moving forward, should be willingly funded by the rate payers and supported by the utility industry.

The nuclear energy industry and others concerned with the repository project believe one critical objective must be accomplished, the protection of the health and safety of the public. A study of a site's ability to protect the public health and safety is what the site characterization phase of DOE's program is all about.

The characterization studies at Yucca Mountain will proceed with the oversight of numerous groups. The oversight groups do guarantee that scientific studies continue to be open and subject to thorough scientific peer review. This scientific oversight is essential to secure the industry's objective of a safe repository, wherever the repository is finally located.

Congress has instructed DOE to study Yucca Mountain in Nevada. To meet this Congressional mandate, DOE seems to have taken every step it can to gain access to the site, including litigation. After 2 years of frustration, DOE was forced, in January 1990, to file a lawsuit against Nevada in Federal District Court asking the court to order Nevada to process its applications for these environmental permits. This suit was filed in parallel with litigation initiated by the State of Nevada in the 9th Circuit.

The 9th Circuit rejected all of Nevada's contentions in this case, a case filed in an effort to forestall any further action on the site by DOE. The court rejected Nevada's constitutional challenges to the Nuclear Waste Policy Act amendments of 1987 and Nevada's claim that the NWPA did not preempt State legislation purporting to block storage of high-level nuclear waste in the State.

The court also upheld the Secretary of Energy's decision to continue site studies at Yucca Mountain. Nevada appealed. But the U.S. Supreme Court refused to review the case.

Now the action is back before the Nevada district court in the case brought by DOE on the permits. Although Nevada has suggested to the court that it will continue to process the permit applications, the State has failed to meet a court order to review deadline, to reach a stipulated timetable for such a review.

As a result, DOE has now had to go back to the court, requesting it to intervene to establish the timetable. Nevada's concession to continue to process the permit applications is no concession at all. While on the surface it looks as if the impasse at Yucca Mountain has been resolved, this could not be further from the truth.

The hollow promise to continue to process permit applications is far from actually issuing the permits, especially when the next statement Nevada makes is that the State will do whatever it can to continue to frustrate the program. Moreover, there will be numerous occasions in the future for Nevada to create additional obstacles to frustrate this program.

If, in fact, the State, as seems likely, acts on the permits by denying them, DOE will be forced to litigate each permit denial, continuing the time consuming judicial process. But when this case is over, the story does not end. The litigation covers only three of the permits that will be needed to complete site characterization studies, giving Nevada many more opportunities to litigate and delay implementation of the site investigation even further.

Clearly, litigation is not the answer. The cycle is unproductive and, for all practical purposes, unending. While DOE is committed to seeing the litigation of all legitimate issues through to their conclusion, we believe that Congress must legislate to break the Yucca Mountain impasse in a timely manner so that DOE can proceed with site characterization studies.

The nuclear energy industry believes that substantial benefits will extend to a repository host State, including jobs, high-tech business, diversification of the economy, and an increased tax base among others. In addition, the 1987 bill passed by the Senate provided for a benefits schedule that would include additional improvements for education, roads, or whatever projects the host State preferred. The industry endorsed the concept of benefits included in that bill.

Those provisions eliminated from the Nuclear Waste Policy Act amendments of 1987 included annual payments of $50 million to the host State during the site studies, a one-time payment when the facility opens, and further annual payments of $100 million until the facility closes. At least one-third of these funds would have gone directly to local governments. It is the industry's view that payments and other benefits in the range of $100 million per year would be appropriate to meet the socio-economic impacts as well as equity concerns of the host State.

The Federal funds could provide extensive educational benefits, an improved transportation system, or funding for other programs or activities deemed appropriate by the State and local governments.

As the Senate considers language for ending the impasse at Yucca Mountain, there are a number of issues we would propose to be considered by the committee. The industry is supportive of the language proposed by the administration in the national energy strategy, but at the same time a number of other approaches may also be an appropriate means of resolving the current impasse in the program.

In essence, whatever solution the Senate adopts should meet three goals. One, enable DOE to get on with site characterization in a timely fashion. Two, provide adequate oversight of DOE activities through permitting and other means to ensure protection of the public health and safety and the environment. And, three, be as complete as possible and avoid having to return to Congress for additional legislation.

First, determination should be made as to which Federal entity is the appropriate one to be designated the permitting agency. Second, if legislation is adopted along the lines of the NES, we believe it will be important to specifically delineate which standards the agency must apply. And, finally, it would seem to be helpful to

tighten the legal regime under which permits for this project are granted, appealed, and processed through the courts.

Current problems include the length of the appeals process, the multiplicity of lawsuits, and the ability of a litigant to frustrate the process by using litigation.

Also, as discussed previously, we believe a section on benefits should be added similar to the benefit provisions included in the 1987 bill which passed the Senate.

We look forward to working with the committee as you consider various approaches to resolve these issues.

In summary, Congress has made clear its intent to move forward with the solution to the disposal of high-level radioactive waste. First, by passing the Nuclear Waste Policy Act in 1982 and again, with amendments to the NWPA in 1987. Today there exists an impasse in the program, frustrating DOE's attempt to implement that clear intent, an intent that initially involves very deliberate technical and scientific studies, including broad and independent oversight to assure that the Yucca Mountain site is suitable and completely safe to function as a high-level waste repository.

We feel it is imperative that Congress act on this vital national energy policy issue and resolve the impasse at Yucca Mountain now. Such legislation will remove a major stumbling block for regaining a viable nuclear energy option as an integral part of a comprehensive national energy strategy. Such a strategy is necessary to meet our Nation's growing electrical requirements, to further energy independence, and to promote environmental progress in the United States.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Draper follows:]

PREPARED STATEMENT OF DR. E. LINN DRAPER, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GULF STATES UTILITIES COMPANIES

My name is E. Linn Draper. I am Chairman, President and Chief Executive Officer of Gulf States Utilities Companies. Gulf States owns and operates River Bend 1 commercial nuclear energy plant. I also have the privilege of serving as a member of the American Committee on Radwaste Disposal (ACORD), the senior utility industry body on nuclear waste and transportation issues. This statement is also provided on behalf of the American Nuclear Energy Council (ANEC), the Edison Electric Institute (EEI) and the Utility Nuclear Waste and Transportation Program (EEI/UWASTE).

Mr. Chairman, I appreciate the Committee's keen interest in this program, and on behalf of Allen J. Keesler, Jr., the Chairman of ACORD, we would like to thank you for the opportunity to submit testimony for the record at the hearing of this committee on March 21 of this year. Additionally, Mr. Chairman, we appreciate the opportunity to present additional testimony and for the invitation to testify before you today.

Given our Nation's urgent need to deal with the security implications of energy, coupled with growing concerns over global climate change, nuclear energy is uniquely situated as a major base load energy source that can effectively address all of these issues. Any balanced, comprehensive national energy strategy must include nuclear energy as one means of meeting the Nation's growing electrical requirements, provide energy security, and promote environmental progress.

We applaud the efforts and leadership of both this committee and the Administration in helping to shape such a national energy strategy. Moreover, we are encouraged that the bill introduced by yourself, Mr. Chairman, and Senator Wallop, the "National Energy Security Act of 1991" (S. 341), and the Administration's "National Energy Strategy Act" (S. 570), include vital initiatives that address many of the institutional issues that inhibit nuclear energy from contributing its full potential to our Nation's growing energy requirements.

One such issue is the subject of this hearing—high-level radioactive waste management. With the urgent need for a national energy strategy, the Nation has a fundamental interest in ensuring the timely implementation of the Federal civilian high-level nuclear waste program. Included as part of the Administration's "National Energy Strategy Act" is an initiative that seeks to end the impasse at Yucca Mountain.

In 1987, Congress chose Yucca Mountain as the first location to be studied as a potential site for the Nation's high-level waste repository. The Department of Energy (DOE), which Congress has instructed to study the Yucca Mountain site, is ready to go forward with vitally needed on-site characterization studies. Unfortunately, political, rather than regulatory limitations or technical concerns have prevented the Yucca Mountain program from proceeding.

Continuing to demonstrate real progress toward identifying and developing a high-level waste repository is critical to eliminating an issue that clearly affects public confidence in nuclear energy. Therefore, this statement has only one primary goal, to encourage this committee, and all of Congress, to act now to resolve the impasse between the State of Nevada and the Federal Government.

MANAGEMENT OF HIGH-LEVEL NUCLEAR WASTE

In 1987, Congress amended the 1982 Nuclear Waste Policy Act (NWPA) and chose Yucca Mountain to be the first location to be studied as a potential site for the Nation's spent nuclear fuel/high-level waste repository. At the same time, Congress established the Office of the Nuclear Waste Negotiator and charged it to negotiate with a willing state or Indian tribe to accept a Monitored Retrievable Storage (MRS) facility or permanent repository. Although the DOE and the Nuclear Waste Negotiator have made considerable progress in fulfilling their respective charters during the past year, the resolution of the high-level nuclear waste disposal issue continues to elude the Nation.

DOE is contractually obligated to begin spent fuel acceptance in 1998 and it intends to meet that obligation by having an operational MRS facility by that time. However, DOE has delayed the operation of a permanent geologic repository to the year 2010. Despite DOE's accomplishments during the past three years, such as reorganizing the entire waste program, selecting a Management and Operation (M&O) contractor, and getting its Quality Assurance (QA) program accepted by the NRC, real measurable progress in the repository program has been limited because of DOE's inability to gain access to the Yucca Mountain site and commence site characterization work as mandated by the Congress. This is primarily due to the State of Nevada's adamant opposition to the will of Congress. This has created an impasse at Yucca Mountain. Its resolution must be one of the Nation's foremost priorities.

REPOSITORY SAFETY

The nuclear energy industry, and others concerned with the repository project, believe one critical objective must be accomplished: the protection of the health and safety of the public. The study of a site's ability to protect the public health and safety is what the site characterization phase of DOE's program is all about.

The characterization studies at Yucca Mountain will proceed with the oversight of numerous groups, including: the host state, the host state's university system, affected counties, the Nuclear Waste Technical Review Board, the National Research Council of the National Academy of Sciences, the Environmental Protection Agency, the United States Geologic Survey, the General Accounting Office, the Office of Management and Budget, the Office of Technology Assessment, the Nuclear Regulatory Commission and numerous committees of the Congress.

These oversight groups serve to guarantee that the studies continue to be open and subject to thorough scientific peer review. This scientific oversight is essential to secure the objective of a safe repository wherever the repository is finally located.

RESOLVING THE IMPASSE

To meet its Congressional mandate to study the Yucca Mountain site, DOE seems to have taken every step it can to gain access to the site, including litigation. After two years of frustration, DOE was forced in January 1990 to file a lawsuit against Nevada in Federal District Court asking the Court to order Nevada to process its application for these environmental permits. This suit was filed in parallel with litigation initiated by the State of Nevada in the Ninth Circuit. Proceedings in the

DOE lawsuit were stayed pending the outcome of the state-initiated case in the Ninth Circuit.

The Ninth Circuit case was filed by the State in an effort to forestall any further action on the site by DOE. But the Court of Appeals ruled unanimously against Nevada on all its contentions, including rejecting Nevada's constitutional challenge to the Nuclear Waste Policy Act Amendments of 1987, and Nevada's claim that the NWPA did not preempt state legislation purporting to block storage of high-level nuclear waste in the State. The Court also upheld the Secretary of Energy's decision to continue site studies at Yucca Mountain. Nevada appealed but the U.S. Supreme Court refused to review the case.

Now the action is back before the Nevada District Court on the case brought by DOE on the permits. Although Nevada has suggested to the Court that it was willing to "continue to process" the permit applications, the State has failed to meet any of the Court-ordered deadlines to reach a stipulated timetable for processing the permits. Nevada's concession to "continue to process" the permit applications may lead one to believe that the impasse at Yucca Mountain has been resolved. This could not be further from the truth. First, "continue to process" is far from actually issuing the permits. This has already proven to be true—the Federal government has been unable to reach an agreement with Nevada on a schedule for processing the permits. Second, there will be numerous occasions in the future for Nevada to create additional obstacles for this program. In fact, assuming that the State acts on the permits, they will likely deny them. Then, to proceed with the program, DOE would be forced to litigate each permit denial, starting the time consuming process all over again. Moreover, Nevada could delay this process even further because the permit applications in question cover only three of many permits that will be needed to complete site characterization work.

Clearly, litigation is not the answer. This litigation cycle is unproductive and, for all practical purposes, unending. While DOE is committed to seeing the litigation of all legitimate legal issues through to their conclusion, we believe that Congress must legislate to break the Yucca Mountain impasse in a timely manner so that DOE can proceed with site characterization studies.

ON-SITE STORAGE

Seventy-nine nuclear energy plants will reach spent fuel storage capacity limits by the year 2010, the year that DOE projects for the opening of a permanent repository. This has forced the industry to depend upon the MRS facility as the means by which DOE will fulfill its 1998 spent fuel acceptance commitment. The utility industry strongly supports the Office of the Nuclear Waste Negotiator and will assist it in any possible way to be successful in negotiating the location of a MRS with a willing state or an Indian tribe.

It must be noted, however, that the failure to resolve the Yucca Mountain issues and identify a site for the MRS have created a related problem relative to the temporary storage of nuclear waste. Many individual utilities have had to begin preparing for the possibility that they will run out of storage capacity before either the MRS facility or the repository will begin accepting the Nation's high-level waste. This means that not only will these utilities, through their ratepayers, continue to finance the vast majority of the cost of the repository and a MRS facility—at a combined cost of more than $500 million annually—but at the same time these utilities must also pay millions of dollars for additional on-site storage.

The delays in the DOE high-level radioactive waste program, the cost of the DOE program, and the cost of additional on-site storage have created concerns among state public utility commissions (PUCs) and the utility industry. The PUCs set the rates for electric utilities operating nuclear energy plants and have allowed the payment of more than $5.8 billion of ratepayer monies into the Nuclear Waste Fund. Several utilities have requested, or will request, ratepayer funding from their PUCs for additional on-site storage prior to 1998. However, if DOE does not meet its 1998 spent fuel acceptance obligation, these utilities will be forced to request supplemental ratepayer funding for still more on-site storage capacity. This leaves industry leadership and the PUCs questioning the lack of progress of the Federal program, which may force ratepayers to pay twice for storing high-level waste. Given the current impasse, industry leadership and the PUCs may be forced to contemplate how much longer this Federal program, which is not moving forward, should be willingly funded by the ratepayers and supported by the utility industry.

THE NEED FOR BENEFITS

Substantial benefits will extend to a repository host state, including jobs, high-tech businesses, diversification of the economy and increased tax base, among others. In addition, the 1987 bill passed by the Senate provided for a representative benefit schedule that would include additional improvements for education, roads, or whatever projects the host state preferred. The industry endorsed the concept of benefits included in that bill. Those provisions, eliminated from the Nuclear Waste Policy Amendments Act of 1987, included annual payments of $50 million to the host state during site studies, a one-time payment when the facility opens and further annual payments of $100 million until the facility closes. At least one-third of these funds would go directly to local governments.

It is the industry's view that payments and other benefits in the range of $100 million per year would be appropriate to meet the socioeconomic impacts, as well as the equity concerns, of the host state. The federal funds could provide extensive educational benefits, an improved transportation system or funding for other programs or activities deemed appropriate by state and local governments.

THE ADMINISTRATION'S N.E.S.

As the Senate considers language for ending the impasse at Yucca Mountain, there are a number of issues we would propose be considered by the Committee.

The industry is supportive of the language proposed by the Administration in the national energy strategy but at the same time a number of other approaches may also be an appropriate means of resolving the current impasse in the program. In essence, whatever solution the Senate adopts should meet three goals: (1) enable DOE to get on with site characterization in a timely fashion; (2) provide adequate oversight of DOE activities, through permitting or other means, to ensure protection of the public health and safety and the environment; and (3) be as complete as possible and avoid having to return to Congress for additional legislation.

There are several important issues which should be addressed. First, a determination should be made as to which Federal entity is the appropriate one to be designated as the permitting agency. Under the N.E.S. legislation, authority to issue permits flows back to the original Federal permitting agency—generally EPA. However, the Senate might want to consider other agencies as the permitting authority. For instance, an approach could be modeled after the Alaska Natural Gas Transportation System, which sought to consolidate the permitting process in building the Alaskan natural gas pipeline. Other models might also be considered. Regardless of the permitting authority selected, Congress should avoid creating a new regulatory entities. The advantage to selecting an existing agency for this purpose is a more timely resolution of issues, because it is already set up and in operation. However, the agency Congress charges with this responsibility should also be given the necessary resources, money and people to get the job done on a timely basis.

Second, if legislation is adopted along the lines of the NES, we believe it would be important to specifically delineate which standards the agency must apply. For instance, if a Federal standard is in place, then the bill could designate that standard for evaluating permits. If no applicable Federal standard exists, the legislation could designate a state standard already in place. Regardless, we believe that it is important to designate a standard by which to judge permits because it would save substantial time and effort rather than having to construct these regulations anew.

Finally, in addition to the above changes, it would seem to be helpful to tighten the legal regime under which permits for this project are granted, appealed, and processed through the courts. Current problems include the length of the appeals process, the multiplicity of lawsuits, and the ability of a litigant to frustrate progress by using litigation.

Also, as discussed previously, we believe a section on benefits should be added similar to the benefit provisions included in the 1987 bill which passed the Senate.

We look forward to working with the committee as you consider various approaches to resolve these issues.

CONCLUSION

Congress has made clear its intention to move forward with a solution to the disposal of high-level radioactive waste, first by passing the Nuclear Waste Policy Act (NWPA) in 1982, and, again, with amendments to the NWPA in 1987. Today, there exists an impasse in the program frustrating DOE's attempts to implement that clear intent, an intent that initially involves very deliberate technical and scientific

studies, including broad and independent oversight, to assure that the Yucca Mountain site is suitable and completely safe to function as a high-level waste repository.

Even with this clear Congressional directive, Nevada officials have stated their intent to continue to frustrate the program. The high-level radioactive waste program has been tied up in seemingly endless litigation. Not even the unanimous decision of the Ninth Circuit Court of Appeals rejecting Nevada's attempt both to veto site selection and block storage of high-level nuclear waste in the State has ended the impasse. Although Nevada's recent decision to "continue to process" DOE's permit applications would seem to indicate that the impasse has been resolved, the State of Nevada will undoubtedly find other means to frustrate the program. It appears that Congress is left with no choice but to legislate to move the program forward. In doing so, Congress should consider including benefits to make the legislation more equitable for the host state.

It is imperative that Congress act on this vital national energy policy issue and resolve the impasse at Yucca Mountain now. Such legislation will remove a major stumbling block for regaining a viable nuclear energy option as an integral part of a comprehensive national energy strategy. Such a strategy is necessary to meet our Nation's growing electrical requirements, to further establish energy independence, and to promote environmental progress in the United States.

The CHAIRMAN. Thank you.

Dr. Draper, we would invite you to further expand on this question of standards and appeals, because, I think, we probably should clarify the standards. I think Mr. Habicht today spoke of the standards the EPA has used in similar situations. And perhaps we could just codify those standards. But we would, in any event, invite a response in writing from you as to what those standards ought to be and also ask what might need to be clarified on judicial review.

It is very clear that we ought to have a full review, but not one that is characterized by delay. Also, on this question of not having to come back to Congress, I very much agree with that. I wonder whether it makes sense to have a two-step process where EPA would have the permitting authority for purposes of site characterization but then be faced again with the same problem later on if the site does pass technical muster. I think we might want to give EPA the permitting authority for the whole process.

[Subsequent to the hearing, Dr. Draper submitted the following:]

As the Senate considers language for ending the impasse at Yucca Mountain, there are a number of issues the industry would propose the Committee consider. As I stated in my testimony, the industry supports the language suggested by the Administration in the national energy strategy, but at the same time, a number of other approaches may also be an appropriate means of resolving the current impasse in the program. Today, I present several ideas and considerations the industry thinks have some merit, and note that whatever solution the Senate adopts should meet three goals: (1) enable DOE to get on with site characterization in a timely fashion; (2) provide adequate oversight of DOE activities, through permitting or other means, to ensure protection of the public health and safety and the environment; and (3) be as thorough as possible to avoid having to return to Congress for additional legislation.

In order to achieve this goal, several important issues should be addressed by the Committee, including whether to designate a permitting agency or oversight body to oversee the permitting process, suggested permitting standards, tightening the administrative and appeals processes, and the inclusion of benefits in any legislation.

DESIGNATING A PERMITTING/OVERSIGHT AGENCY

The first issue the Committee should address is whether and which entity is the appropriate one to be designated as a permitting agency or oversight body. Under the Administration's National Energy Strategy legislation, authority to issue permits flows back to the original Federal permitting agency—generally EPA. We support this approach; however, the Senate may wish to consider different approaches or other agencies as the permitting authority.

For instance, an approach could be modeled after the Alaska Natural Gas Transportation System, which sought to consolidate the permitting process in building the Alaskan natural gas pipeline. There, Congress designated a Federal Inspector to oversee the permitting process. The Inspector was authorized to operate under authority granted by the different agencies and, in consultation with those agencies, made final permitting decisions.

Another approach would be to consolidate all permitting authority in one existing federal agency. This would avoid creating a new regulatory entity and would expedite the timely resolution of issues because the agency would already be set up and in operation.

In still another approach, the Committee could exempt DOE from all Federal, State, local, and tribal laws and regulations that would otherwise apply to such activities, with the exception of the Atomic Energy Act. However, such legislation should require DOE to conduct its activities with due regard for the interests protected by the otherwise applicable legal requirements by directing DOE to take those requirements into consideration and to comply to the best extent practicable. Congress may or may not choose to appoint an oversight body, such as EPA, the Nuclear Waste Technical Review Board, or the National Academy of Sciences, to oversee the DOE's activities. This oversight body could be directed to monitor DOE's activities and to report to Congress on a regular basis, such as annually or semi-annually. The host state would also be authorized to report to Congress. Thus Congress, being informed of DOE's activities, can take appropriate restrictive action.

The Committee might also consider other models. However, Congress should give the agency it charges with this responsibility the necessary resources, money and people to get the job done on a timely basis.

SUGGESTED STANDARDS FOR A PERMITTING PROCESS

If legislation is adopted along the lines of the NES, or this Committee designates a permitting authority, we believe it would be important to specifically delineate which standards must apply.

For instance, if a federal standard is in place, then the bill could designate that standard for evaluating permits. If no applicable federal standard exists, the legislation could designate an applicable state standard already in place. If no standards are in place at all, the permitting agency might be required to promulgate applicable standards within a specific time period or the legislation could specify standards to be used.

Regardless which method the Committee chooses, we believe designating a standard by which to judge permits would save substantial time and effort as opposed to having to construct these regulations anew.

TIGHTENING ADMINISTRATIVE AND APPEALS PROCESSES

In addition to the above changes to existing law, it would seem to be helpful to tighten the legal regime under which permits for this project are granted, appealed, and processed through the courts. Current problems include the length of the administrative permitting process, the multiplicity and length of lawsuits, and the ability of a litigant to frustrate progress by using litigation. We believe a few changes in the administrative process and the appeals process would alleviate these problems.

As we have seen under the current legislative regime, the administrative process can be effectively used to delay site access. To diminish this ability, Congress could require the permitting agency to process the permits within a certain period of time, e.g., within 90 days from date an application is submitted and, if no decision is made in the required time frame, the permits would automatically be granted as specified in the permit application. The legislation could also prohibit judicial review of this failure of the permitting agency to act.

On the other hand, if a decision is made to deny the permits, that decision should be final and not subject to the administrative reconsideration process. Instead, the permitting decision should proceed directly to an appeals court.

The choice of an appeals court is an area where Congress could address the problem associated with the length of the appeals process. Legislation could restrict jurisdiction over appeals to the federal district courts, rather than state courts. Moreover, the designation of a particular court to hear all appeals, such as the Temporary Emergency Court of Appeals, would create the advantage of allowing one tribunal to gain special expertise in repository permitting appeals and to do so in a timely fashion.

At this point, many regimes could be enacted to further tighten the appeals process. I will discuss two. First, during the pendency of any appeal and remand of a denial of a permit application by the permitting agency, DOE could be allowed to move the site characterization process forward, as if the permit were actually granted. This would require DOE to operate under the letter and spirit of the law governing the denied permit application.

Under a second regime, DOE would only be allowed to move forward with site characterization studies upon a motion and a showing to the appeals court that DOE is likely to succeed on the merits of its appeal and, further, will act under the letter and spirit of the law governing the denied permit application. In order to allow DOE to make this showing, the court would be required to hold a hearing within 30 days of DOE filing the motion asking for this authority to proceed with characterization. Moreover, the legislation could include a basis for the court to render its decision, such as it should have a reasonable basis to grant DOE's motion. Finally, there should be no interlocutory appeal of a decision granting DOE's motion.

Another way to limit the multiplicity of suits facing the program is to limit the judicial review of the grant of an appeal to constitutional challenges.

Finally, the legislation should restrict the ability of all levels of reviewing courts to enjoin site characterization activities during appeals of permitting decisions, except as part of a final judgment or only upon a showing of clear and convincing evidence that standards for injunction have been met. Additionally, the requirement of a bond covering the costs of delay could be added to the legislation.

The CHAIRMAN. Mr. Loux, this reminds me of one of my earliest memories of the first spanking that I ever got. My playmate and I found a chocolate cake on my mother's table. And we went in and just helped ourselves to it and we had chocolate all over our faces and all over our hands. Then she came in, and we were hiding under the dining room table. I remember it like it was yesterday. And she asked, did we get her chocolate cake. And we said, "oh, who, me?"

Now, here is Nevada, and I have five pages of statements expressing the State's position. Here is the brief saying they will "exercise every power and every aspect of its inherent jurisdiction to frustrate the Federal program."

Here is then-Governor Bryan, "We will continue to vigorously fight the decision on scientific, technical, and legal grounds in the courts and through whatever avenues are necessary to right this injustice." This reminds me of Winston Churchill's statement that we will fight them on the beaches and the hedgerows. And it goes on and on. You kind of get the flavor.

And here is one from Bob Loux, "No way they will turn dirt in January of 1991. It is another 6 years or 8 years before they even get access."

There is no need for me to keep reading these quotations. Now I am not here to quarrel with Nevada, and certainly not with my good friends in the congressional delegation who are representing their people. This is a representative republic. The people of Nevada are entitled to their representation, and they are darn sure getting it. The people of Nevada, I understand, do not want this. And, so, it is your job to frustrate the process.

You, and everyone from Nevada, have said that over and over and over and over again. And you have done just that. Some of these permit applications have been pending for years.

And then, here comes the Gold Bond mine and, boy, they are using thousands of times as much water and many times as many acres. The water usage for Gold Bond mine is 22,000 acre-feet as opposed to 402-acre feet for Yucca Mountain. And land disturbance

is 2,800 acres as opposed to 465 acres. But Gold Bond comes in and their application is zipped right through in a matter of months.

But DOE comes in with its application for a permit for Yucca Mountain and, as you have said, as you have very plainly said, over and over again, you are going to fight them on the hedgerows and on the beaches.

Now, surely you do not expect us to believe that Nevada suddenly has had this vision on the road to Damascus and suddenly wants to expedite this process. You do not have to answer that.

Mr. LOUX. Would you like an answer?

The CHAIRMAN. Only if you want to. I do not want to be unpleasant, because you all are good people there doing what your people want you to do. But, I mean, there is no need to come in and tell us that you do not mean what you have said over and over again because we know that you do.

Mr. LOUX. Mr. Chairman, as the Governor testified in March in front of this very committee, Nevada is going to act fully within the confines of Federal and State law. We are not going to act illegally as has been alleged here. We will, obviously, oppose the project. Eighty percent of the citizens in the State who we work for as public servants, and I am sure you are familiar with from your perspective, are asking the State to do what it can to insure that the project does not come to Nevada. But we are not going to do it illegally as has been alleged.

We are operating——

The CHAIRMAN. I am sure you will obey the court order when it finally comes down. But as you all have said over and over again—well, as Governor Miller said, "You can wait 30 days or 30 months or 30 years, we are not going to capitulate."

Mr. LOUX. If that is what the law requires.

The CHAIRMAN. At the hearing, I think the Governor said, "I said we would use our legal process to try and thwart this, or, as the Attorney General characterized it, frustrate it." It is very clear what is happening here. And we may be dumb, but we ain't stupid.

Mr. LOUX. Mr. Chairman, you, yourself at the same hearing said you, yourself would be doing the same thing as the people in Nevada are doing if it was happening to you.

The CHAIRMAN. I probably would. I am not blaming you. All of you are good people.

Ms. DONDERO. I would like to respond to one statement that you made, Mr. Chairman.

You talk about the Gold mine. Well, the Gold mine is extracting from that soil, gold. And you are talking about something else that is going to be around millions of years when you and I probably will not know what is going to happen to our land.

And that is the big difference that I see. It is like I want to put all my garbage in my neighbor's yard so I can have a clean yard. And I think that those are the differences that we are talking about.

The CHAIRMAN. I understand that. I understand that fully.

Senator Domenici.

Senator DOMENICI. Mr. Chairman, I do not have any questions, other than let me just say, Commissioner Dondero, on your last comment on the Gold mine extraction order versus what the Feder-

al Government has asked for, I do not think it is fair, nor do I think you want to leave the impression that the Federal Government's request for water at this early stage has anything to do with water that might be needed to run a process or to run this facility.

This was water necessary, a very small amount, necessary to do the evaluating work to see if the site ever qualified. Is that not right?

Ms. DONDERO. I am not really in favor of what the Gold mines are doing, either. In using the water, I think that what we are talking about is possible contamination. And do we know scientifically that that will not happen?

I am talking about a vital concern of all Nevadans, which is our water supply. And we certainly have that to concern ourselves with, as Nye County knows too, where it is sited the Armagosa River runs underground. I want to know that the citizens, my children, my grandchildren, their grandchildren will have the same safety and concerns for their health as I am having for the citizens right now.

Senator DOMENICI. I share your concerns, the concerns of your constituents. I do not think there is any State in the union that has more relationship to the Federal Government's ongoing processes in the nuclear field than mine. We have the two national laboratories, we are evaluating how much it is going to take to clean up what they have left there over the years. It is going to take a lot of years and a lot of money.

We are the site for the low-level transuranic waste. And you understand that has been going on for about 11 years or 12 years. We started off one way. It has ended up another way. It is still not done.

So I understand. But one of the real problems with reference to high-level nuclear waste is frankly, the people of your State, and maybe justifiably so, do not believe that this first-step process of having the scientists tell us whether the site is a good site or not—after which many, many steps follow before anything is done—they apparently do not believe that will be done honestly and fairly.

Ms. DONDERO. Correct.

Senator DOMENICI. And the truth of the matter is that sooner or later it has to be done by scientists, engineers, and other experts and a conclusion has to be reached. And what the Government is having trouble with is we keep on redoing it, restructuring it, putting more into it because you all complain about its integrity. And we cannot get there, even that first step.

And, frankly, I do not blame you all. I have not heard any Nevada leaders say, "We think you should do the first step." We really believe it can be done right and fairly and do it, other than your way. So we are not getting anywhere.

What happens up here is that sooner or later everyone understands that there either is a site in the Nation or there is not. But we cannot find out yet. And I think you say, we do not think you ought to even find out whether we are the right site. And that is under the guise of, "you are doing it wrong."

Frankly, there are good scientists in America and they are honest.

Ms. DONDERO. I realize there are fine scientists. And I realize that Nevada certainly has to work with whoever is working there. But I do feel that we are looking at burying something in the ground, and to continually bury large amounts, the bill states that you have 70,000 metric tons of waste and it is already more than half-full. You are talking about digging more tunnels and more tunnels. And pretty soon one State has it all.

I think that you are concerned about in New Mexico, too. How much can you take? And you have not done anything about reprocessing and reducing the amount of waste that you are talking about.

Senator DOMENICI. Let me say I have not heard that. I have not heard Nevada or anyone else say, if you can prove up a site we will take a tenth of the waste or a quarter of the waste, but find 10 more sites.

You just say no, and then you know, sooner or later the Government is going to—because we are mandated to do it, we are going to find a site and say it is right or it is not right. I do not know, maybe you are right that we cannot really do this, that we cannot reach a final scientific conclusion on the validity of a site, and if we did we would not be honest about it. The scientists would, for some reason or another, be telling us wrong information so they could put nuclear waste deep in the bowels of the earth so that they could do some harm. I do not believe that. I think they are going to try, and we have got to find some way to get from at least a first step in the direction.

But I want to be on your side for a minute, so do not get angry at me. I think, Mr. Chairman, the language in the bill that says we are going to take many of these processes to ourselves, I think we have to be very careful that some findings, very significant findings, be made before we do it.

It is obvious to you, it may be obvious to the committee, but maybe it even has to be presidential findings of extraordinary consequences and extraordinary needs, because I think there are many occasions when we want to take powers away from States, and you are aware of it, Mr. Chairman.

When it works in your State you do not like it, and sometimes I do not like it. I do not like it right now, as you know, on WIPP, and we are trying to make it work right.

So I think we would be interested in very specific kinds of findings—I would, at least—that ought to be made even as high as the President to say these will be waived, but I will tell you the truth. The Chairman is probably right. If the conduct and attitude remains the same, it is not going to be hard to make the findings 6, 8, 9, 10 months from now, because clearly processing these kinds of things and seeing action is not all that difficult. I mean, nonaction and arbitrariness is pretty easy to measure in this field, when you are talking about permits and the like.

So on the one hand it seems to me we ought to make findings. On the other hand, I do not think you ought to assume that that means that the State can continue to do what it is saying here and yet claim that they are cooperating to the full extent that the law requires. That is really not true.

Thank you very much for your patience, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Craig.

Senator CRAIG. Mr. Chairman, thank you very much.

I certainly want to associate myself with the latter comments of my colleague from New Mexico. I think any of us who are concerned about States' rights—and let me say, and uniquely, again, westerners, who have such dominant presence of the Federal Government within their State boundaries are, I think, rightfully sensitive to the goings on on those lands and how they affect the surrounding State and/or private properties, and I think it is a uniqueness to the West that is appropriate in the sense of history and all that has come before, as it relates to a Federal-State relationship.

I also recognize that there comes a time, and that is why I was referencing a few moments ago section—I think it is 511—as it relates to precedent, and if in fact it is, and how we deal with it, and I think we need to be extremely cautious there, Mr. Chairman.

Mr. Loux, are you of the mind—I have heard all the dialogues and we need not replay those. I know where Nevada is. But I got a slight message of conflict when I heard you, at least in reference to a comment that the commissioner made as it relates to not being done fairly.

Are you of the mind that the State of Nevada is concerned that the science is not being done fairly, that you therefore cannot be associated with it closely enough to judge fairness, or are you of the mind that no matter what science has done it is inadequate simply because it is inadequate, and that science does not exist today to make the necessary findings that would satisfy you and/or the citizens of the State of Nevada?

Mr. LOUX. Let me try to answer that two ways, if I might. The first has to do with the issue of science, and let me explain that the State of Nevada greatly respects the achievements and abilities of science in many areas, and including the nuclear waste area.

Its problem is in the way that the science is applied by the Department of Energy. Truly no one in Nevada by recent polls—perhaps 70 percent of Nevadans do not believe that the Federal Government, principally DOE, will be honest or truthful with any of the results about the findings at the site, and I think that is one issue.

Senator CRAIG. Let us stop at that point. Can we carry it on further and say—or, I should say, and are you saying that that lack of believability that the citizens of the State have is a result of past history and past events, or the inability of the State of Nevada to associate itself with the process to affirm or deny the believability of it?

Mr. LOUX. Both.

Senator CRAIG. You mean the current law does not allow the State of Nevada to participate at every level in such a way as to accept or reject and therefore create an environmental believability.

Mr. LOUX. The law does provide it. However, there is not the funding nor the access to the site in an unrestricted, unfettered

manner, as well as access to data that we cannot get. Data that is provided to the Soviets we cannot get, for example.

Senator CRAIG. You can prove that beyond a shadow of a doubt?

Mr. LOUX. Yes.

Senator CRAIG. Go ahead.

Mr. LOUX. The second issue is the issue of fairness, and the State leaders and the citizens as well believe that under the 1982 act there was a concept of fairness, regional equity. At that point, a veto, or notice of disapproval, meant something because there were sites ostensibly that could be fallen back to, a second site, or a third site, assuming all three were fully characterized.

Under the current scenario, as you well know, there is only one site, without any back-up. The State believes that you cannot run a first-of-its-kind scientific program and have any sort of scientific integrity when there are other no other alternatives, there are no back-ups, and when the agency itself who is administering the program is attempting in many instances to see the regulations—safety regulations—tailored to fit the site itself.

Those are concerns that the State has since 1987. We believe that the ball game changed entirely in 1987. We were a helpful participant with the Department of Energy prior to 1987. We fully participated in their program and worked with them closely, but frankly the 1987 amendments act and the way it was handled, the way we were singled out, destroyed any confidence, any public trust in the program whatsoever, and I do not think it is reparable.

Senator CRAIG. Mr. Chairman, one last question of Mr. Bradhurst. What is the population of Nye County?

Mr. BRADHURST. Nye County has a population of approximately 20,000 people, and it is 18,000 square miles.

Senator CRAIG. You expressed your concern about water, as did Commissioner Dondero. Was it a concern of water quality, or water quantity, or both?

Mr. BRADHURST. Senator, it is both. The concern is not so much the 402 acre feet, as I mentioned, over the next 10 years, but it is the fact that the water will be taken out of the Armagosa Valley Drainage Basin, and in time possibly during the construction phase and operation phase, there could be a lot more water taken out, so if there is water taken out of that drainage basin and the area is already considered by the State water engineer as a water-short area, you can see where we are coming from.

Senator CRAIG. You understand in the State permitting process, and I think it is true in Nevada as well as in Idaho, that you can give a permit for a single purpose, a single act, a single action, a time line, and that one does not necessarily guarantee or explicitly allow the next step.

In other words, this 402 acre feet, some 100 million gallons for purposes of site characterization, would not necessarily obligate that water source to further and/or additional use beyond a site characterization. You do know that that is a possibility?

Mr. BRADHURST. That is a possibility, certainly, through the State process. Through a Federal process I do not know that, but through the State process that is a fact, that you have temporary permits. For example, Bond Gold has a temporary water permit.

When they are finished their extraction activity in probably 10 or 15 years, they will have to walk away from that water application.

Senator CRAIG. I was noting that theirs was a temporary by definition, and wondering if you had recognized that, that it is very difficult to argue the water quantity argument. It is legitimate based upon an absence of the science, because of the denial of the application of the science, at this point to argue a water quality issue, until you understand the characteristics of the structures and the aquifers that might be involved.

Mr. BRADHURST. No question, Senator, it is difficult to argue the water quantity issue at this point in time. As I said in my testimony, it is what comes after. Is this going to also pertain, this preemption, to the construction phase, and how much water will be needed during the construction phase and what does that mean to the Armagosa Valley?

Senator CRAIG. Thank you, and thank you all very much.

The CHAIRMAN. Thank you, Senator Craig. Thank you very much, lady and gentlemen. We appreciate your testimony.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

APPENDIX

Responses to Additional Questions

Department of Energy,
Congressional and Intergovernmental Affairs,
Washington, DC, June 4, 1991.

Hon. J. Bennett Johnston,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: On May 13, 1991, W. Henson Moore, Deputy Secretary accompanied by John W. Bartlett, Director, Office of Civilian Radioactive Waste Management testified before your committee regarding the Nuclear Waste Management Provisions in Subtitle B of Title V of S. 570.

Following the hearing, you submitted one written question to supplement the record. Enclosed is the answer to that question.

If we can be of further assistance to you or your staff, please contact our Congressional Hearing Coordinator, Renee Wilhite, on (202) 586-4277.

Sincerely,

Jacqueline Knox Brown,
Assistant Secretary.

[Enclosure.]

Question From Senator Johnston

Question 1: I understand that on May 13, 1991, U.S. District Court Judge William McKibben entered into an order directing the State of Nevada to process two of the Department's pending permit applications and take final definitive action on the permits no later than July 17. With respect to the third permit, the judge directed the state to take certain actions to confirm its processing of the permit application. This sounds encouraging.

a. Is my understanding of the judge's order accurate? Please clarify for the record exactly what action was ordered by the judge and provide the Committee with a copy of the written order.

b. Under the circumstances, does the Department still believe that legislation is necessary? Why or why not?

Answer 1(a): Your understanding of Judge Howard D. McKibben's order of May 13, 1991, is correct. The State of Nevada must take definitive action, either issuing the permits or denying them, on the surface disturbance (air quality) permit and the underground injection permit by July 17, 1991. On that same date, the State must report on the progress it is making in processing the third permit, the water appropriations permit. A copy of the court's one-page order is attached per your request.

It should be noted that the court has not set a time certain for the State to take definitive action on the water appropriation permit.

Answer 1(b): The Department of Energy strongly believes that enactment of section 511 of the National Energy Strategy Act (S. 570) is still essential if present and future activities at Yucca Mountain are to proceed without obstruction and delay. Even if the State complies with the court order to take final action on the air quality and underground injection permits by July 17, the State is under no obligation or order to grant the permits. If the permits are denied, DOE will be forced to comply with the State's procedures for appealing such denials by requesting a review of the denials by the Nevada Environmental Commission. Should the Commission affirm the denial of permits, then DOE will once again have to return to the Courts to seek relief.

Regarding the equally important water appropriation permit, the State has only to report to the court on July 17 on the "progress" being made toward definitive action; there is no deadline by which that action must occur. And when and if the State does finally act on the water appropriation permit, we will be faced with yet another round of litigation if the permit is denied.

We would hasten to add, however, that in the event the Department had to seek relief in the Federal Court from the State's refusal to issue any of the subject permits, it is quite possible that the State would move to have such appeal transferred to a Nevada court. While we would vigorously oppose such action, there is a risk that the Federal Court might agree with the State's challenge and transfer jurisdiction of the case to the State court.

So, in spite of repeated rulings by the Courts favorable to DOE, it is still possible for Nevada to cause significant additional delays with respect to just these three permits presently at issue. For example, as I stated in my testimony, the surface disturbance (air quality) permit has been pending since January 1988; normally, it takes the State a month or two to process such permits. The underground injection permit application has been pending for 2 years and, although we could find no precedent for how long such an application should take to process, it seems clear that 2 years is an inordinate length of time. The water appropriation permit has been 2 years and 8 months, where the State normally handles such permits within about 10 months.

And, importantly, it must be remembered that these three permits are only the first of some 15-20 that will be required to complete the site characterization process over the next 7-8 years. So, yes, we definitely do believe that legislation is necessary.

EPA Responses to Senator Johnston's Questions Regarding Site Characterization at Yucca Mountain

Question 1(a). Do your regulations contain processing time limits? If not, how long do you anticipate it would take, on average, to process each of the permits?

Answer. At the present time it is anticipated that site characterization activities at Yucca Mountain will require an identification number under the Resource Conservation and Recovery Act, a PSD permit for the "prevention of significant deterioration" under the Clean Air Act (CAA), a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA), and an Underground Injection Control (UIC) permit under the Safe Drinking Water Act (SDWA). Since an identification number under RCRA, not a permit, is expected to be needed for purposes of site characterization, we will direct our responses to the permitting questions toward the CAA, CWA, and the SDWA.

40 CFR 124 contains generic EPA procedures for issuing RCRA, UIC, PSD, and NPDES permits. The regulations require the Regional Administrator (RA) to review for completeness within 30 days, a permit application submitted for a new UIC injection well, a major PSD stationary source or a major PSD modification, or an NPDES new source or new discharge. If the application is incomplete, the RA must notify the applicant of the deficiency and list the information necessary to make the application complete. The regulations contain no processing time limits other than the period of review for completeness. However, for PSD permits, the Clean Air Act (CAA), Section 165(c), specifically requires any completed permit application for a major emitting facility to be granted or denied within one year of filing a complete application.

Though we have no way of determining how long it will take to issue a permit in this particular instance, we can provide the time period it has generally required to issue the permits. In the past it has generally required 15-24 months from the date the RA determined the application to be complete to issue a UIC permit. The time period required to process an NPDES permit has generally been 6-8 months. A RCRA identification number can be obtained in 2-4 weeks. We would note that the State of Nevada has issued the PSD permit pursuant to authority under the CAA, and the UIC permit pursuant to authority under the SDWA.

Question 1(b). How long would you anticipate it will take for you to set up procedures to begin the permitting process?

Answer. Generic regulations for the issuance of RCRA, UIC, PSD, and NPDES permits are in place. Procedural regulations governing permit issuance are found at 40 CFR 124.

Question 1(c). What additional resources will EPA require in order to ensure that this job gets done in a timely manner?

Answer. We can estimate what additional resources will be needed by setting forth the approximate FTE's generally required to issue each type of permit: UIC (0.25-1.0 FTE), NPDES (0.25-0.5 FTE), PSD (025-0.5 FTE).

Question 1(d). Is it clear from the legislative language what standards would apply in issuing permits under the applicable environmental laws if the Federal Government took over the permitting responsibility?

Answer. EPA interprets the legislative language as requiring us to apply the federal standards as they are set forth in the relevant environmental statutes and regulations.

Question 1(e). Would it be desirable or necessary to clarify the applicable standards in the legislation?

Answer. We believe the existing applicable Federal standards would continue to be enforceable if the legislation were passed. It is not necessary or desirable to reiterate the standards in new legislation.

Question 2(a). Could you tell us what that process is and where else it has been used?

(b). In what circumstances in the past has EPA taken back the authority previously delegated to a State?

Answer. EPA has not "taken back" authority previously delegated to a state in a situation which is analogous to the present case involving the state of Nevada and site characterization at Yucca Mountain. It is our interpretation of the proposed legislation that no administrative action would be required of EPA to "take back" Nevada's permitting authority. Enactment of the legislation would produce that result. EPA would then be in a position to issue the permits without following specific procedures for withdrawal of state permitting authority. Nevada's permitting authorities for all other purposes would not be withdrawn, but would remain with the state.

As we stated in response to question 1(b), the procedures EPA would follow for issuing the permits am already in place in 40 C.F.R. 124.

Question 3(a)-(d). Will site characterization cause a threat to human health or safety, or cause significant effect or undue harm to the environment? Wouldn't it be possible to characterize the site and—even if it were found to be unsuitable—to move on to another site without causing undue harm to the environment?

Answer. It is our understanding that the environmental effects of site characterization activities at Yucca Mountain will be comparable to those presented by the development of an underground mining operation. In that sense, the environmental permitting and enforcement of the site characterization will involve regulatory actions and decisions with which EPA is familiar.

Further, we believe there would be no threat to the health and safety of the people of Nevada with respect to site characterization activities. The area in which site characterization is conducted will be disturbed as is any area in which major drilling and trenching takes place. However, that disturbance should not pose any threat to the health and safety of the people of Nevada, provided the standards of the applicable environmental laws are met.

Site characterization activities consist of a variety of scientific and engineering tests. Some of the tests will be performed from the surface, and some will be performed underground in an exploratory studies facility.

The surface-based tests will include two general types of activities: tests performed at the surface and tests performed in boreholes and trenches. Surface-based testing will require site preparation, including the construction of access roads, drill pads, and lined pits for collecting drilling liquids. Tests to be performed on the surface include seismic refraction and reflection surveys; magnetic and gravitational field surveys; and streamflow, meteorological, and radiometric monitoring. DOE will also undertake an extensive borehole drilling program throughout the area to study hydrologic properties, moisture content, moisture movement, physical properties, fracture characteristics, and mineral composition.

DOE will also construct an exploratory studies facility to collect information on the geologic, hydrologic, geoengineering, and geochemical environment of the rock at the site. This facility will include support buildings, roads, graded pads, utilities and a mined rock pile on the surface, as well as two access ramps or shafts and underground testing rooms and drifts. A variety of tests will be carried out during the construction of the two accesses and after the construction has been completed.

Since EPA has not previously been involved in any site characterization activities, it is difficult to assess fully the associated impacts. However, EPA will be involved in an oversight capacity to ensure that care will be taken to minimize where possible adverse environmental impacts.

We believe it is possible to complete site characterization activities and "decommission" the site, if it is found unsuitable for a repository, without undue harm to the environment. DOE anticipates restoring the site as close to its original condition as possible by such measures as removing equipment; backfilling underground excavations, shafts, and trenches with rock previously removed for the testing; and sealing boreholes with ground-matching grout.

FOLLOWUP QUESTIONS FOR BOB LOUX FROM SENATOR JOHNSTON

[Committee Note.—The following questions were submitted to the State of Nevada after the May 13, 1991 hearing. No response was received from the State of Nevada despite repeated requests. On June 14, 1991, a representative of the State said that no response would be forthcoming.]

Question 1. As you know, the federal government has a mandated responsibility to find a suitable site for disposal of nuclear waste. The Department of Energy has been directed to study the Yucca Mountain site. Certainly, the federal government cannot simply ignore its responsibility to study the site. The site has not been technically disqualified. Prominent scientists have told us that there simply is insufficient data available to find the site suitable or unsuitable. The state's position in court has been that every legal authority would be used to "frustrate" the federal program. Governor Miller told us in March that the state's position was unchanged. He told us then that the state would continue to use the legal process to "thwart" the process.

a. What would you have the federal government do differently?

b. What would you do if you were in Congress' position?

c. Can you give the Congress any assurance that the state will act in good faith to allow the Yucca Mountain site to be studied?

d. Can you give us any assurance that the Department will be allowed to carry out an objective scientific inquiry of the Yucca Mountain site to determine its suitability?

e. If the state is so certain that the site is not technically suitable, why doesn't the state want to take the opportunity to prove that during site characterization?

f. Why isn't the state willing to engage in an objective technical debate with the scientific community over these technical issues?

Question 2. The State of Nevada has said consistently that the Department of Energy cannot be trusted to carry out on objective scientific analysis of Yucca Mountain. When Governor Miller testified before the Committee, he cited this lack of trust as the reason for the state's strident opposition.

a. What would you have the Congress do to address that issue?

b. If Congress were to increase the amount of money available to the state to conduct oversight of the Department's program, would this change the state's position?

c. If you were able to determine what amount of money would be adequate for oversight, and if you were able to determine what independent analysis were adequate, and if you could carry out the work the state felt appropriate, would the state then be willing to negotiate an agreement that would allow the Department to carry out site characterization?

d. Is there anything that would change the state's position—or at least alter the state's position sufficiently to allow site characterization to go forward in a cooperative manner?

Question 3. You said in your statement that the state's resolve to fight Yucca Mountain has not been weakened by your defeat in court. Rather, you say that "it only indicates that one selected avenue for relief has been exhausted."

a. Do you mean that the state will no longer use the legal process as a tool to obstruct the issuance of permits for site characterization? Or, rather, do you mean simply that the particular legal argument used in the Ninth circuit has been exhausted?

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